Supreme Court, U.S.
FILED

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No. _____

In The
SUPREME COURT OF THE UNITED STATES

RICHARD JOHN FLORANCE, JR.,
Defendant-Appellee-Petitioner-Petitioner,
v.
STATE OF TEXAS,
Plaintiff-Appellant-Respondent-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS
FIFTH DISTRICT OF TEXAS AT DALLAS

ORIGINAL PETITION FOR A WRIT OF CERTIORARI WITH APPENDICES A, B, AND C

RICHARD JOHN FLORANCE, JR.
1908 VASSAR DRIVE
RICHARDSON, TEXAS, 75081

Questions Presented

Which court is the "last" court?

1. Does "refused" mean "affirmed"?

Double Jeopardy

2. Is the secret, ex parte, bill-of-pain-and-penalty civil judgment a "claim forfeiture" that triggers Double Jeopardy?

STATUTORY CHALLENGES

Penal Code—Vagueness

3. Is Penal Code § 32.49 vague?

    a. May a penal code incorporate (depend on) language from a civil code, at all?

    b. May a penal code "outsource" the actus reus or the mens rea to a civil code?

    c. May the Penal Code "outsource" actus reus or mens rea elements to the Gov't Code?

    d. Does a *presumption* of fraud adequately substitute for a *definition* of fraud?

Gov't Code—Due Process, Separation of Powers

4. Do Gov't Code §§ 51.901, 51.902, and 51.903

violate Due Process or Separation of Powers?

a. What does "not ... provided for" mean?

b. Does the "not ... provided for" (absence of permission) standard give Notice of prohibited conduct?

c. May the "not ... provided for" standard ever be lawful basis for a fraud claim in this state?

d. Does the "rational connection" test even apply where both premise and conclusion are matters of law?

Focusing on §§ 51.902, 51.903 (each)

e. May any state statutory scheme dispense with Notice and/or the opportunity to be heard?

Focusing on §§ 51.901, 51.903 (*in pari materia*)

f. Where there is neither Notice nor opportunity to be heard, is the presumption of fraud rendered irrebuttable?

g. Is it really a judicial process where the legislature dictate, via forms, the pleadings, affidavits, and orders?

The Penal/Gov't Code Hodgepodge

Burden Shifting

5. Does the hodgepodge shift the burden of proof?

Incorporating invalid scheme

6. Does the criminal scheme survive where it incorporates, in whole or in part, an incompetent civil scheme?

Very selective prosecution

7. Does unequal enforcement vitiate the hodgepodge?

Charging instruments

8. Does either Information charge an offense?

Advisory Panel

9. How could the county court possibly produce the demanded Venire?

10. Do the jury instructions direct the verdict, shift the burden, or otherwise relieve STATE of its burden of proof?

Sentencing

11. Is the sentence lawful?

Compelled Consent

12. May the trial court compel the defendant to agree to specific waiver language?

No Agency

13. Did ROACH ever have signature authority?

No standing

14. Where is any evidence that STATE ever had an "actual grievance" (case or controversy)?

Parties to the Appeal

Petitioner

RICHARD JOHN FLORANCE, JR. ("RJF")
Defendant - Appellant

Respondent

STATE OF TEXAS ("STATE")
Plaintiff - Appellee

JOHN R. ROACH, District Attorney, Collin County

JOHN R. ROLATER, JR., Asst. DA, Chief, Appellate Division

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Petition for a Writ of Certiorari

RJF petitions for a writ of certiorari to the state appellate court as follows:

Citations to decisions below

None for Round 2.

Jurisdiction

(i) CCA "refused" review
13 Jan 2010 [+90: 13 Apr 2010].
No. PD-1714-09. [1]

(ii) Extension N/A

(iii) Rule 12.5 N/A

(iv) Statutes, Jurisdiction
28 U.S.C. §§ 1257(a) (final), 2101(c).

(v) Regarding Rule 29.4(c)
STATE is a party. All activity in STATE's courts.

No Oral Argument Requested

Oral argument is not expected to aid in the resolution of this matter.

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[1] RJF filed simultaneous petitions for review. Tex. S. Ct. No. 09-1028 is still pending.

Statement of the Case

When Federal Questions Were Raised

Round 2.

NOTICE OF DECLINING TO PLEA.

STATE never served any (competent) charging instrument on RJF.

MOTION TO DISMISS.

Double Jeopardy (Question 2; motion's Point 7);

§ 32.49 is vague (Point 1, with parts a. to d.);

§§ 51.901, 51.902, 51.903 violate Separation of Power and/or Due Process (Point 2, with parts a. to g.);

Penal Code incorporates invalid Gov't Code language (Point 3);

Hodgepodge shifts burden of proof (Point 4, with 12 parts);

Failure of rational connection test and related issues (Point 5);

Selective enforcement (Point 6).

COLLATERAL ORDER DOCTRINE APPEALS.

First – Regarding contents of transferred Record from Round 1.

Second – Quite ironically, the trial judge compelled RJF to consent to waiver language.

Third – Which Information (there were two) was active for Round 2?

Fourth – "Secret" orders and commingling of habeas into underlying case (Record tampering).

MOTION TO SUPPRESS.

"Notice of Lien" is not evidence of fraud.

MOTION TO SHOW AUTHORITY.

Prosecutor never proved any agency.

PRE-TRIAL HABEAS.

Same issues as Motion to Dismiss, plus challenge to standing (via no evidence).

MOTION TO RECUSE.

Trial judge buried the Habeas Application, treating it as a mere pre-trial motion, intending not to rule on it at all. The order denying habeas is styled per the underlying case and is in the same order that denies the motion to dismiss.

PROPOSED JURY INSTRUCTIONS.

The 50+ proposed instructions, including general and special instructions, cover 50+ pages. The instructions given both (A) failed to inform and (B) directed the verdict.

ADMISSIBILITY OF "NOTICE OF LIEN".

During trial, RJF objected to DAVIS' testimony as to signature. [2] No foundation; relevance.

ENTRY OF VERDICT.

There's no Notice, statute, or evidence.

SENTENCE.

There's no statute, evidence, or consent.

MOTION IN ARREST OF JUDGMENT.

Reasserts the preceding documents. Denied by expiration of time.

PRINCIPAL AND REPLY BRIEFS – DIRECT APPEAL.

In addition to the foregoing:

Record tampering;

"Secret" orders; case commingling;

STATE's wire-tap of RJF's phone(s), especially just before and during trial;

---

[2] RJF did not take the stand. This Record contains no evidence that RJF signed anything ***or*** filed anything.

Harassment – RJF's daughter was subpoenaed but never called as a witness (decision based on phone tap information?);

STATE listed its investigator but never called him as a witness (decision based on phone tap info?);

Record locked in trial judge's office for 9-10 days before trial;

Trial judge refused to serve his orders on RJF;

No fact issue for advisory panel to decide.

Argument

Which court is the "last" court?

1. Does "refused" mean "affirmed"?

"Last" court.

Certiorari is properly directed to the last court entering a ruling.

STATE's Supreme Court and "refused".

When STATE's Supreme Court say "refused", they've entered a ruling. Where there's a *response* filed or requested, which is distinguished from a *waiver*, "refused" very clearly means "affirmed". *See* TEX. R. APP. P. 56.1(c).

In the CCA.

With the CCA, per TEX. R. APP. P. 69.1, "refused" has no additional meaning. It's a generic "denial" of discretionary review. [3] Therefore, this petition is directed to the state appellate court.

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[3] The CCA *have* to "refuse" review of non-cases (***civil*** matters); they have "***criminal*** case only" jurisdiction.

Double Jeopardy

2. Is the secret, ex parte, bill-of-pain-and-penalty civil judgment a "claim forfeiture" that triggers Double Jeopardy?

It's punitive ...

See Ex. 4-106. The "forfeiture" non-case, *see* No. 07-171, is a *district* court case. That "judgment" is punitive. It's a compelled forfeiture, under color of law, of a perfectly lawful claim and its related secured creditor status. The *ex parte*, secret (Star Chamber), completely-legislatively-dictated proceedings screamingly violate Due Process. *Cf. Bajakajian*; *Austin*. *See also Murphy*, 272 U.S. at 632; *Mitchell* 1938, 303 U.S. at 398; *Kennedy*, 372 U.S. at 168-70; *Halper*; *Kurth Ranch*. *Cf. also Hudson*; *Ursery*; *Dowling*; *89 Firearms*; *Ward*; *One Lot Emerald Cut Stones*; *Rex Trailer Co.*; *Marcus*.

... but is it valid?

See also Questions 4.e., 4.f., and 4.g. That "judgment" is facially void, which STATE confesses.

"NOW"—STATE'S *COUNTY* COURT POSITION:

The "Notice of Lien" ***is*** a claim against property (Tr. 2008 Jul 17 p.11 (vol. 7 of 10)).

"THEN"—STATE'S *DISTRICT* COURT POSITION:

It "IS NOT" a claim against property! Ex. 4-106 (item 4 at bottom of p.1) (vol. 10). *See also* Tr. vol. 7 at 20-21. *See* No. 07-0376. In addition to STATE's defiance of Due Process, the "IS NOT" "finding" facially and instantly takes the case out of the hodgepodge! Picture a-swing-and-a-miss at T-ball.

Void judgments don't trigger Double Jeopardy.

Since the district court's "judgment" is facially void, twice over, it doesn't trigger Double Jeopardy.

STATUTORY CHALLENGES

Penal Code—Vagueness

3. Is Penal Code § 32.49 vague?

a. May a penal code incorporate (depend on) language from a civil code, at all?

Yes. This may be difficult to avoid.

b. May a penal code "outsource" the actus reus or the mens rea to a civil code?

Actus reus--maybe.
Mens rea—NO!

The analysis of § 32.49 starts with GOV'T CODE § 51.901(c)(2). *See* Question 4. Those exceptions are nowhere labeled as such, and, as seen in the jury instructions, are nowhere treated as such, either. The lien/claim (or is it document/instrument?) [4] is presumed fraudulent unless "provided for". Thus, an element of this "crime", namely what is "provided for" or not, is a question of *law*, not fact. Key, the "not ... provided for" standard ***proscribes*** nothing.

No civil code lawfully supplies a mens rea for a Penal Code crime. *Cf.* the *civil* DTPA, BUS. & COMM. CODE §§ 17.41 to 17.63, in particular § 17.46, with the *criminal* DTPA, PENAL CODE § 32.42. The criminal DTPA "outsources" nothing to the civil DTPA, neither actus reus ***nor mens rea***.

c. May the Penal Code "outsource" actus reus or mens rea elements to the Gov't Code?

NO! The Gov't Code sets up offices and their

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[4] Hodgepodge "clarity" is indicated parenthetically.

authority. This is not the place to codify claims, defenses, *or* procedures, much less crimes. [5] To codify STATE's claim or defense in the Gov't Code is to suggest legitimacy in/by STATE. To presume legitimacy in/by STATE is to risk relieving STATE of its burdens of proof, starting with standing. *Cf. Hamdan*. "Outsourcing" elements of a crime, ***especially*** to the Gov't Code, renders the Penal Code statute overbroad, thereby encouraging enforcement ***well*** beyond STATE's authority. [6] *Karlan*, 416 U.S. at 925 (Douglas, J. dissent) (citing *Zwickler*, 389 U.S. at 250, quoting *NAACP*, 377 U.S. at 307; also citing *Grayned*, 408 U.S. at 109; *Dombrowski*, 380 U.S. at 486; *Aptheker*, 378 U.S. at 508-09; and *Shelton*, 364 U.S. at 488); *Reese*, 92 U.S. at 221. The risk, as here, is applying the Penal Code to resolve a ***civil*** matter.

d. Does a *presumption* of fraud adequately substitute for a *definition* of fraud?

PENAL CODE § 32.49(a)(1) doesn't define *fraud*. Instead, it "outsources" the entire concept to GOV'T CODE § 51.901(c), which doesn't define *fraud*, either. Further, for the Gov't Code, the context is ***civil***. Key, the overt lack of definition allows "re-definition". Here, *fraud* is "re-defined" to mean "the exercise of the right of redress against corrupt STATE officials and employees". STATE won't find ***that*** "re-definition" of *fraud* in its Webster's dictionary! [7]

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[5] The exception proves the rule. Art III defines Treason. It's difficult to fathom, though, how commercial claims against STATE-employed criminals equate to Treason.

[6] How ironic is it that such blatant butchery of Due Process is codified in the Gov't Code?! *See* GOV'T CODE § 51.903(c).

[7] In Round 1, STATE argued that a Webster's dictionary could provide an adequate definition of *fraud* for this hodge-

No "fair warning".

See Bouie, 378 U.S. at 351 (quoting *Harriss*, 347 U.S. at 617); *Lanier*, 520 U.S. at 265 and n.5; *Morales*, 527 U.S. at 55-56; *Carhart* (citing *Grayned*, 408 U.S. at 108). If a crime may be "defined" via **one** civil code, it may be "defined" via **many** civil codes.

Insufficient guidelines.

Kolender, 461 U.S. at 357-58 (citing M. BASSIOUNI, SUBSTANTIVE CRIMINAL LAW 53 (1978); *Hoffman Estates*; *Smith v. Goguen*; *Grayned*; *Papachristou*. *Gregory*, 394 U.S. at 120 (Black, J., concurring). Civil matters enforced criminally.

Too vague.

Whisenhunt, 464 U.S. at 969-70 (citing *Connally*; *Kolender*; *Grayned*, 408 U.S. at 108-09; *Giaccio*, 382 U.S. at 402-04; *Raley*, 360 U.S. at 437-39; *Joseph Burstyn, Inc.*, 343 U.S. 495, 532 (Frankfurter, J., concurring); *Cantwell*, 310 U.S. at 307-08; *Hurtado*, 110 U.S. at 535-36; *McGautha*, 402 U.S. 183, 248-259 (Brennan, J., dissenting) and cases cited therein; Amsterdam, Note, The Void-For-Vagueness Doctrine in the Supreme Court, 109 U. PA. L. REV. 67, 80-81 (1960)); *Parker*, 417 U.S. at 756]; *Smith v. Goguen*; *Winters*, 333 U.S. at 515; *A.B. Small Co.*; *Hoffman Estates*, 455 U.S. at 497-505; *Jos. E. Seagram & Sons, Inc.*, 384 U.S. at 48-49; *Barsky*, 347 U.S. at 443, 448; *Neblett*, 305 U.S. at 302- 03. *See also Posters 'N' Things, Ltd.* (scienter element required); *Gentile*; *Wright* (Brennan, J., dissent); *Lewis*; *Lanzetta*; *Coates*, 402 U.S. at 614; *Shuttlesworth*, 382 U.S. at 90-91. Where there's no definition, *fraud* is "re-defined" to mean anything.

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podge, i.e., that the Penal Code ***may*** "outsource" actus reus ***and*** mens rea to a non-Penal-Code source, e.g., a dictionary. ***Two*** trial rounds *and* direct appeals; ***still*** no definition of *fraud*.

Gov't Code—Due Process, Separation of Powers

4. Do GOV'T CODE §§ 51.901, 51.902, and 51.903 violate Due Process or Separation of Powers?

a. What does "not ... provided for" mean?

Clear as day.

On the one hand, it's perfectly clear that "not ... provided for" means "permission required". Thus, this "standard" ***proscribes*** nothing. *Cf. Grayned.*

Clear as mud.

On the other, what ***does*** "not ... provided for" mean? Further, what has to be "provided for": the lien/claim or the document/instrument? [8] What does "laws" mean: (A) legislation only, *see* § 51.903(g) (item (1)), or also (B) judicial and administrative authority, *see* § 51.901(c)(2)(A)? If "legislation only", asserting a Common Law fraud claim is a criminal act of fraud! [9] If "legislation only", then mere assertion of a treaty provision-, judicial doctrine-, international law-, Common Law-, or any administrative ruling-based claim is **CRIMINALLY** fraudulent, by presumption, by "definition". In sum, the "not ... provided for" standard is anti-Texan, anti-American, vague, and overbroad on its face.

Proving "not ... provided for" is legally impossible.

"Not ... provided for" is the key element of the "exceptions", which STATE must negate to trigger the "presumption", even per its own hodgepodge.

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[8] This question is even more pronounced when analyzing PENAL CODE § 32.49 in conjunction with § 51.901(c)(2)(A).

[9] I.e., applying "saving to suitors" is a crime! *But see Lewis & Clark Marine.*

OPTION A—PROVE UP ENTIRE LAW LIBRARY.

To ***prove*** "not ... provided for", STATE would have to introduce into evidence ***every*** statute, judicial opinion, AG opinion, administrative ruling, etc., i.e., ***the entire law library***, one item at a time, via expert testimony *ad nauseam ad infinitum*, showing how each item does "not ... provide for" the claim, instrument, etc.

This trial ended; therefore, STATE did not prove up the entire law library.

OPTION B—SHIFT THE BURDEN.

Burden the accused with proving "provided for", i.e., make the accused prove both "not fraud" *and* innocence. *But cf. Mullaney* (citing *In re Winship*).

Not only is that monstrous, but also we're still talking about a *question of law*, procedurally an *exception*, provided by a *civil* code.

OPTION C—ISSUE DIRECTED VERDICT.

Direct the administrative advisory panel to "find" "not ... provided for".

Since "not ... provided for" is an element of the "offense", such an instruction is tantamount to a directed verdict, i.e., burden shifting. *See supra.*

OPTION D—HAVE PANEL DETERMINE THE LAW.

Have the panel determine the "evidence of law".

Advisory panels have no such authority, but, if they did, they'd need guidance on the matter, e.g., a TEX. CONST. art. I, § 8 instruction. *Cf. Brailsford.* There was no such instruction, here.

b. Does the "not ... provided for" (absence of permission) standard give Notice of prohibited conduct?

Cf. Grayned, 408 U.S. at 108. *See also Carhart*

(citing *Grayned*). The "not ... provided for" (permission required) standard exists to limit the *government* not the *people*. *Cf. Hamdan*. The "not ... provided for" standard prohibits ***everything*** and proscribes ***nothing***.

c. May the "not ... provided for" standard ever be lawful basis for a fraud claim in this state?

Oyama; *J.H. Munson Co.*; *Riley*.

The hodgepodge confesses rampant ignorance.

Leadership reflects constituency.

On the one hand, for a while there, "(Hartford) Van Dyke style" liens did become a national craze. Key to Van Dyke's misunderstanding was *what* gave rise to such liens. He included Arts. I, II, III, etc., instead of just Title 18 or a penal code. Thus, he also didn't know how to defend himself.

On the other, STATE and its officers, employees, etc., glory in a myth of immunity. STATE and its people know the score. What is STATE? Power, at least in appearance. That power has limits, including Title 18 and STATE's very own Penal Code. To defy those limits is to ***beg*** for litigation.

Where the "victim" isn't a victim of anything but ("educated") ignorance, STATE may utilize its existing, tried-and-true declaratory judgment process. If costs (filing fees, Service, etc.) need to be waived or shifted, fine. But no *legit* STATE needs a Star Chamber, much less a fraud crime! Moreover, where the victim ***is*** a victim, a ***legit*** STATE is a non-party. ***Nazi*** STATEs victimize and then charge their victims criminally, i.e., conspire, aid and abet, etc.

A law*ful* STATE needs no protection from its own. A law*less* STATE has no protection.

Purpose of this hodgepodge.

This hodgepodge has a purpose: to intimidate into silence those who demand such things as lawful, limited government. Thus, STATE's policy overtly violates 18 U.S.C. §§ 241, 242. We can add just as quickly witness tampering, both state, PENAL CODE § 36.06(a), and federal, e.g., § 1512(b)(1), (b)(2)(A), (b)(3), (c)(2), and (k), § 1513(e)([1]), (2). To be intimidated out of the right of redress is to be deprived of a chose in action, which is flat out theft. PENAL CODE § 31.03. That takes us to mail fraud and its conspiracy, 18 U.S.C. §§ 1341, 1349, RICO and its conspiracy, 18 U.S.C. §§ 1962, 1963, official oppression, PENAL CODE § 39.03(a), and "organized crime", PENAL CODE § 72.02(a).

Thus, neither the language nor the purpose of the "not ... provided for" standard justifies a *fraud* claim.

d. Does the "rational connection" test even apply where both premise and conclusion are matters of law?

Burden.

If actus reus is presumed, then the defendant must show "not rational". *Ulster County*.

If mens rea is presumed, STATE must show "rational". *Leary*, 392 U.S. at 36.

However, there being no ***facts*** to analyze, the burden issue is largely moot.

No facts to analyze.

The "rational connection" test analyzes the rationality of the connection between the "basic" fact proved and the "elemental" fact presumed. Here, there are no ***facts*** to analyze, whether basic or elemental. In this very convoluted logic chain,

§ 32.49 depends on the presumed conclusion, which is the ultimate legal conclusion, *fraud*. That conclusion is derived from negation of three exceptions, one of which is relevant in this case, namely § 51.901(c)(2)(A). The premise of that exception asks a question of law: "What is '(not ...) provided for?'" In short, the purported "basic" "fact" is a question of law, and the purported "elemental" "fact" presumed is the ultimate legal conclusion.

"Permissive" doesn't obviate the analysis.

"Permissive" is not a magic elixir. *See, e.g., Leary*; *Romano*. There must still be a rational connection.

STATE *still* sees only one presumption. There are at least three. Thus, even if § 2.05(a) applied, there's no rational connection (A) between the legal conclusion that a lien/claim (or is it document/instrument?) is "not ... provided for" and the legal conclusion that it's "fraudulent" (actus reus); (B) between a refusal to release a lien/claim and the legal conclusion that the demand for release is legitimate (mens rea); or (C) between a refusal to release a lien/claim and an intent to defraud (mens rea). These presumptions are chained. One failure breaks the chain, and all three fail the test. Moreover, if either (B) or (C) were "rational", then half the commercial litigation bar, ***all*** plaintiffs, ***all*** prosecutors, and the entire family law bar would be behind bars! [10] More on (A), *infra*.

There's nothing "permissive" about these!

Ultimately, we can call an elephant a mouse all

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[10] This applies "re-definition" of *fraud* as intended, here, i.e., to mean whatever the party opposing the lien/claim needs for it to mean at that time. "It's obviously fraud; they refused to release in the face of a promise of criminal prosecution!"

day, but it doesn't change either one. Nothing about these chained presumptions is "permissive", and no § 2.05(a) mantra changes that. Even to get to (A), we must first presume that "not ... provided for", a standard that limits officeholders and fiduciaries, may be perverted by those officeholders and used to limit the people. Even then, if a case survives dismissal, the "not ... provided for" element is already ruled proved, as a matter of law. At that instant, guilt is already decided. The mere *existence* of the trial on a charge with this name/label/title mandates (A), i.e., presumes guilt, which conclusion this chain is specifically designed to perpetuate.

Focusing on §§ 51.902, 51.903 (each)

c. May any state statutory scheme dispense with Notice and/or the opportunity to be heard?

Setting up a Star Chamber is beyond outrageous; it's conscious shocking. *Hamdi*. *See also Smith*; *Milliken*; *Internat'l Shoe*; *Armstrong*, 380 U.S. at 552; *Sniadach*; *Boddie*; *Fuentes*; *N. Ga. Finishing*; *Jones*. *See also* TEX. RS. CIV. P. 680, 681, 686, 690, 693, 694.

Focusing on §§ 51.901, 51.903 (*in pari materia*)

f. Where there is neither Notice nor opportunity to be heard, is the presumption of fraud rendered irrebuttable?

To presume fraud is to relieve STATE of its burden. *Madigan*, 538 U.S. at 620 (defendant does not have burden to prove lawfulness); *Grogan* (bankruptcy setting; the evidentiary standard for proving nondischargeability per fraud is a

"preponderance"; hence, fraud must be proved); *Heiner*, 285 U.S. at 329 (tax case; irrebuttable presumption issue); *Mullaney*; *Johnson* (directed verdict of guilt relieved State of its burden).

Fraud is presumed irrebuttably. This whole scheme operates on a *res ipsa loquitur* theory. The claim (document?) exists; therefore, it's fraudulent. § 51.901(c). This conclusion is all the more compelled where the lienholder is shut out from participating in the proceedings. § 51.903(c).

Irrebuttable presumptions violate Due Process. *Elkins*; *Salfi* (in particular part III, discussing why *Salfi* is distinguished); *LaFleur*; *Vlandis*; *Stanley*.

g. Is it really a judicial process where the legislature dictate, via forms, the pleadings, affidavits, and orders?

Via the "no thinking required" forms, *see* § 51.903, and the Nazi-fied "no Notice required" policy, § 51.902(c), § 51.903(c), the legislature have completely undermined the entire purpose and point of judicial participation.

The Penal/Gov't Code Hodgepodge

Burden Shifting

5. Does the hodgepodge shift the burden of proof?

Shall we count the ways?

(1) STATE is relieved of its burden to prove its affirmative defense of fraud, *but see Dixon*;

(2) same with STATE's affirmative defense of

immunity;

(3) thus, "within the scope" is presumed irrebuttably;

(4) the "Official's" demand for release (a defense) is presumed valid;

(5) STATE's claim of fraud is presumed valid, *but see Madigan*, 538 U.S. at 620; *Grogan*; *Heiner*, 285 U.S. at 329; *Mullaney*; *Johnson*;

(6) STATE's standing is presumed irrebuttably, *but see Sunset Valley*, 146 S.W.3d at 646; *Tex. Dept. of Parks & Wildlife v. Miranda*; *Defenders of Wildlife*;

(7) the "not ... provided for" exception, § 51.901(c)(2), is presumed both valid and satisfied, *but see Carhart* (citing *Grayned*);

(8) the victim's claim is presumed fraudulent per a motion to dismiss standard, *but see e.g., Madigan* (Part III); *Twombly*; *Iqbal*;

(9) the victim's claim is presumed fraudulent per a summary judgment standard, *but see Scott* (citing *Diebold*, 369 U.S. at 655; *Anderson*, 477 U.S. at 255) (summary judgment presumptions are *against* movant);

(10) the victim's refusal to release upon demand is presumed criminal;

(11) STATE is relieved of its burden to prove mens rea—key to § 32.49(a)(1) is Gov't Code § 51.901(c)(2)(A); thus, how does STATE prove "not ... provided for"?—*see* Option A, p.10, *supra*; *see also Clark* (burden and mens rea in insanity defense context) (citing (1) *Mullaney* (burden to prove mens rea on STATE not defendant), (2) *In re Winship* (to relieve the evidentiary burden is to violate Due Process), (3) *Sandstrom*, 442 U.S. at 524 (presumption of mens rea violates Due Process), (4) *Cool*, 409 U.S. at 103 (where defendant has to prove

anything beyond a reasonable doubt, the burden has been shifted), and (5) *Martin*, 480 U.S. at 233-34 (self-defense evidence not limited to defendant's case-in-chief))

(12) the accused is relieved of his burden, too; since "not ... provided for", a ***question of law***, is an element, the defendant gets a "mistake of law" defense. If "not ... provided for" is proved, then, simultaneously, "mistake of law" is proved, as well.

Incorporating invalid scheme

6. Does the criminal scheme survive where it incorporates, in whole or in part, an incompetent civil scheme?

The civil statutes violate Due Process.

Section 51.901 establishes a no-Notice, no-opportunity-to-be-heard, Star Chamber, bill-of-pain-and-penalty proceeding. *See* No. 07-0376. The civil scheme *presumes* fraud rather than either defining it or compelling proof of such.

Rule of Legality.

"Outsourcing" provides no "fair warning". "The ... principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand ***to be proscribed***. [*Bouie*, 378 U.S. at 351 (quoting *Harriss*, 347 U.S. at 617.)]" *Lanier*, 520 U.S. at 265 and n.5 (emphasis added). *See also Morales*, 527 U.S. at 55-56; *Carhart* (citing *Grayned*, 408 U.S. at 108).

Rule of Lenity.

Santos; *Bass*, 404 U.S. at 347-48 (rule of lenity—

(1) common language (2) legislatively enacted); *Bifulco* (touchstone is statutory ambiguity).

Very selective prosecution

7. Does unequal enforcement vitiate the statute?

STATE persecuted Republic of Texas!

STATE never "saw" RJF but only ✳ **Republic of Texas** ✳, whatever that is. *Cf. Yick Wo. See also Village of Willowbrook* ("class of one", intentional, irrational, reproducible governmental action).

irs agents never charged.

Moreover, the irs agents who file "Notices of Lien" daily are never even sent demand for release letters, much less charged. *Cf. Oyama; Pollock.*

Charging instruments

8. Does either Information charge an offense?

No manner or means.

Neither Information asserts manner or means of any offense. "An information must allege in plain and intelligible language all the facts and circumstances necessary to establish all the material elements of the offense charged." *Reeves*, 162 S.W.2d at 705; Art. 21.02(7). There being neither statute nor evidence, there is no offense ***to*** charge. It's malicious on its face (A) to charge someone criminally for exercising the right of redress and (B) to characterize a claim for damages and/or its security-preserving "Notice of Lien" as fraud solely because a document exists.

9. How could the county court possibly produce the demanded Venire?

Sixth Amendment doctrine and *Brailsford* apply. But, there was no Venire.

10. Do the jury instructions direct the verdict, shift the burden, or otherwise relieve STATE of its burden of proof?

Yes. *See* Tr. 2008 Jul 17 pp.4-10 (vol. 7 of 10).

To relieve STATE of its burden is to violate Due Process. *See* Question 5.

These instructions nowhere mention anything about "exceptions", starting with § 51.901(c)(2)(A), or STATE's burden regarding them, much less the sequence of analysis compelled by the hodgepodge, itself. Nowhere asserted is whether it's the lien/claim or the document/instrument that has to be "provided for". For Ex. 4-106 (vol. 10), [11] the "law" was "legislation only", but that's from the *form*, not the *statute*; the instructions provide no guidance on what "law" "provides for" what. No properly or sufficiently informed panel can return a verdict of guilty for this case. The "presumption of fraud" **never** arose, because STATE never negated the exception of "provided for". Moreover, what is or isn't

[11] It's remotely possible that RJF has missed it, but he finds nothing in the Record confirming that these Exhibits were ever published to or otherwise delivered to the panel. Where that's the case, RJF was denied access not only to the panel but also to the entire advisory panel process.

"provided for" is a ***question of law***, which matter is beyond the panel's authority to decide.

Sentencing

11. Is the sentence lawful?

There is no evidence of any criminal violation from trial, and nothing submitted for sentencing was agreed to. *See generally*, Tr. 2008 Jul 17 (vol. 8 of 10). *Blakely*. *Cf. Arnold* (vacated per *Booker*).

Compelled Consent

12. May the trial court compel the defendant to agree to specific waiver language?

Vexatious multiplication – by the "judge".

A matter that should have taken maybe five minutes per *Escobedo*, 378 U.S. at 490 n.14, *Miranda*, 384 U.S. at 475 ("The record must show, or there must be an allegation and evidence which show, that an accused was offered counsel but intelligently and understandingly rejected the offer.") (citing *Carnley*, 369 U.S. at 516), took more than an hour, vexatiously multiplying the costs of this case.

The legislatively proposed waiver language, Art. 1.051(g), goes well beyond mere waiver of representation per Art. 1.051(f), and RJF doesn't agree to 1.051(g).

Consent can't be compelled. *Cf.* FED. R. CIV. P. 8(c); TEX. RS. CIV. P. 94, 266. *See Rudzewicz*, 471 U.S. at 486; *Ohralik*; *Bates*. *Cf. Gonzalez*.

No Agency

13. Did ROACH ever have signature authority?

He who claims agency must prove agency.

See Schultz, 956 S.W.2d at 760; *Zuniga* (citing *Bernsen*, 52 S.W.3d at 309); *Alamo Cmty. Coll. Dist.* (citing *S. County Mut. Ins. Co.*, 750 S.W.2d at 172); *Disney Enters., Inc.*, 981 S.W.2d at 30; *Gray* (agency is not presumed; wife cannot be presumed to be husband's agent). "[O]nly an alleged principal's words or conduct that are represented to the third party can clothe an alleged agent with apparent authority. [*BML Stage Lighting, Inc.*, 14 S.W.3d at 401.]" *Coleman*, 180 S.W.3d at 588.

To presume agency into existence is to shift the burden of proof. *See* Question 5. On this Record, actual authority doesn't exist. *See Cameron County Sav. Assn*, 819 S.W.2d at 603. Apparent authority doesn't exist, either. This may *also* be a *sufficiency* point, but before that, it's a *shifting of the burden* point. *Cf. Coleman*.

No standing

14. Where is any evidence that STATE ever had an "actual grievance" (case or controversy)?

Standards.

STATE's.

"Actual grievance". *Sunset Valley*, 146 S.W.3d at 646; *Tex. Dept. of Parks & Wildlife v. Miranda*.

FEDERAL.

Defenders of Wildlife (case or controversy).

STATE never proved standing.

HODGEPODGE CRIMINALIZES RIGHT OF REDRESS.

Per this hodgepodge, (A) asserting a commercial claim against a criminal who is also a state officer or employee and (B) refusing to withdraw that claim in response to an extortionate demand to do so is (C) a ***crime*** sounding in moral turpitude, i.e., fraud. No statute?-- no evidence of standing.

IT'S "PROVIDED FOR".

Per GOV'T CODE § 51.901(c)(2)(A), a document/instrument "not ... provided for" is presumed fraudulent. Here, the document/instrument ***is*** "provided for". "Notices of Lien" were long since ancient documents in 1883 when they were first required to be filed. *See Vance. See also Estate of Romani*; *McDermott*; *Estate of Donnelly*; *Speers*; *Pioneer Am. Ins. Co.*; *Security Trust*; *Holt*; *Thompson*; *Fisher*. The irs files "millions" of 'em.

Regarding "lien/claim", suing commercially based on criminal conduct is an ancient plaintiff's theory. *See, e.g.*, PENAL CODE § 1.03(c); *Sosa*; *Bivens*; 42 U.S.C. § 1983; *Paul v. Davis*; *Mitchell II*; *Crandon*.

NO EVIDENCE OF FRAUD.

In sum, STATE never negated the exceptions. [12] Therefore, the "presumption" never arose. Since STATE relied throughout on the "presumption", it matters greatly that there is no direct evidence of fraud, by *any* definition. Ultimately, what does

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[12] The Statutory Challenges point out that the Penal Code outsources both actus reus and mens rea to a civil code. Key here is that the conjunctive paragraphs giving rise to the "presumption" must be read as "exceptions". Per PENAL CODE § 2.02, STATE must negate exceptions. Because these exceptions are codified in a ***civil*** code, they don't have the § 2.02 prescribed language, but they are clearly exceptions.

fraud mean? Until *fraud* is defined, [13] it's legally impossible to have relevant evidence of it! The "Notice of Lien" was never relevant evidence.

Relief Requested

Premises considered, RJF requests the following remedies and relief:
(A) Grant the petition and take jurisdiction;
(B) Given the existing civil "judgment", Declare either that the criminal case is a violation of Double Jeopardy or that the civil "judgment" is void;
(C) Declare PENAL CODE § 32.49 void;
(D) Declare GOV'T CODE §§ 51.901 to 51.903 void;
(E) Declare the jury instructions *and* verdict void;
(F) Declare the compelled written waiver of representation void and the viva voice waiver sufficient;
(G) Vacate the appellate court's judgment;
(H) Remand to the trial court with instructions (1) to dismiss and (2) that BARRY not participate;
(J) Allow RJF to brief additional issues; and
(K) Grant RJF any and all other relief at law, in equity, or sui generis, to which he may show himself justly entitled.

Respectfully submitted,

/s/ Richard John Florance, Jr.
Richard John Florance, Jr.

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[13] This hodgepodge, a fraud ***on*** the people, isn't about fraud ***by*** the people. To prove the point, this entire case may/can/will be determined without ***any*** definition of *fraud!*

Appendices
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Appendix A—Round 2 -
Direct Appeal

Rule 14.1(i)(i)—Appellate Opinion and Judgment

2009 Aug 28—Appellate Opinion

AFFIRMED; Opinion filed August 28, 2009

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-08-00984-CR

RICHARD JOHN FLORANCE, JR., Appellant
V.
THE STATE OF TEXAS, Appellee

On Appeal from the County Court at Law No. 3
Collin County, Texas
Trial Court Cause No. 002-81238-06

MEMORANDUM OPINION

Before Justices Moseley, O'Neill, and Murphy
Opinion By Justice Moseley

Richard John Florance, Jr. was charged by information with failure to release a fraudulent lien or claim, a class A misdemeanor. *See* TEX. PENAL CODE ANN. § 32.49 (Vernon 2008). A jury found him guilty[,] and the trial court sentenced him to six months in jail and a $2,000 fine. The background of

this case and some of its related litigation are detailed in opinions of this Court and other courts; we do not repeat them here.[1] Because all dispositive issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.2(a), 47.4. We affirm the trial court's judgment. [⊥ 2]

Florance is appearing pro se. We hold pro se litigants to the same standards as a licensed attorney and do not grant them any special consideration. *See Johnson v. State*, 760 S.W.2d 277, 279 (Tex. Crim. App. 1988). While we broadly construe appellant's issues in the interest of justice, we have no duty to make an independent review of the record and applicable law to determine whether the complained-of errors occurred. *See Cavender v. State*, 42 S.W.3d 294, 296 (Tex. App.—Waco 2001, no pet.). We will not make appellant's arguments for him, nor will we address any issues that are inadequately briefed. *See* TEX. R. APP. P. 38.1(h); *Roberts v. State*, 273 S.W.3d 322, 326 (Tex. Crim. App. 2008) (agreeing with court of appeals that inadequately briefed complaint was properly overruled).

Appellant's first point challenges the trial court's

[1] *See State v. Florance*, No 05-07-00088-CR, 2007 WL 2460088 (Tex. App.-Dallas Aug. 31. 2007. pet. dism'd) (not designated for publication) (*Florance I*); *In re a Purported Lien or Claim Against Taylor*, 219 S.W.3d 620 (Tex. App.—Dallas, pet, denied [mand. denied]), *cert. denied*, 128 S.Ct. 317 (2007); *see also Florance v Buchmeyer*. 500 F.Supp.2d 618, 628-31 (N.D. Tex.) (discussing background of cases and dismissing Florance's federal court case against the state judge, federal judge, county district attorney's office, county investigator, county clerk. deputy clerks, attorneys and law firm representing county clerk, city prosecutor, assistant attorney general, county, State of Texas. and United States), *appeal dism'd*, 258 Fed.Appx. 702 (5th Cir. 2007), *cert. denied*, 128 S.Ct 2905 (2008).

jurisdiction. He argues that his interlocutory appeal of a transfer order and an appeal from the denial of his pretrial petition for habeas corpus deprived the trial court of jurisdiction under the "collateral order doctrine." Florance cites no authority in his brief that the collateral order doctrine, even if it applied to state court criminal proceedings, would deprive the trial court of jurisdiction to proceed to trial. *See Taylor v. State*, 268 S.W.3d 752, 754 (Tex. App.—Waco 2008, pet. ref'd) (collateral order doctrine is federal doctrine of appellate jurisdiction for certain collateral orders, but not recognized in Texas), *cert. denied*, __ U.S. __, 129 S.Ct. 2161 (2009). We overrule Florance's first point.

In his second point, Florance argues the State did not have standing to prosecute him because it did not show an actual grievance. This point appears to challenge the State's standing to sue as if this were a civil proceeding. This is, however, a criminal proceeding and criminal proceedings are prosecuted in the name of the State of Texas against the accused. *See* TEX. CODE CRIM. PROC. ANN. art. 3.02 (Vernon 2005). The district attorneys and county attorneys shall represent the State in all criminal cases. *Id.* arts. 2.01, 2.02; *Saldano v. State*, 70 S.W.3d 873, 876 (Tex. Crim. App. [⊥ 3] 2002) (Texas "Constitution gives the authority to prosecute criminal cases to the county attorneys, criminal district attorneys, and district attorneys, under the regulation of the legislature"). Thus, the State has standing to prosecute a violation of the penal code.

In the argument under this point, Florance asserts the "Florance's First Notice of Lien" was not admissible in evidence. We disagree. The notice was

a certified copy of the document filed in the county court proceeding and the trial court did not abuse its discretion in overruling Florance's general objections of no foundation and relevance. *See* TEX. R. EVID. 103(a)(1), 401, 901; *Willover v. State*, 70 S.W.3d 841, 845 (Tex. Crim. App. 2002) (abuse of discretion standard of review); *Bird v. State*, 692 S.W.2d 65, 70 (Tex. Crim. App. 1985) (no foundation objection does not preserve error). We overrule Florance's second point.

Florance's points three through six challenge the constitutionality of penal code section 32.49 and government code section 51.901. TEX. PENAL CODE ANN. § 32.49; TEX. GOV'T CODE ANN. § 51.901 (Vernon Supp. 2008). We rejected these arguments in *Florance I*[,] and Florance presents no additional reasons for changing our analysis. *See Florance I*, 2007 WL 2460088, at *2-*6. We overrule points three through six.

In his seventh point, Florance argues that unequal enforcement vitiates the statute. A claim of selective prosecution must be supported by evidence showing others similarly situated have not been prosecuted for similar conduct and that the State's selection of the defendant for prosecution was based on an impermissible classification such as race, religion, or other arbitrary classification. *See Armendariz v. State*, 529 S.W.2d 525, 527 (Tex. Crim. App. 1975); *Garcia v. State*, 172 S.W.3d 270, 273-74 (Tex. App.—El Paso 2005, no pet.) ("An appellant claiming selective prosecution must come forth with 'exceptionally clear evidence' that the prosecution was initiated for an improper reason."). The record here does not support either requirement. Florance

merely developed [⊥ 4] testimony that other notices of lien have been filed in Collin County. There is no evidence in the record that those notices were fraudulent as described by government code section 51.901, or that others who refused to execute a release within twenty-one days of receipt of a notice requesting such release were not prosecuted for refusing to do so. We overrule Florance's seventh point.

In his eighth point, Florance raises a double jeopardy argument regarding the civil proceeding under government code section 51.903. *See In re [a?] Purported Lien or Claim against Taylor*, 219 S.W.3d 620, (Tex. App.—Dallas, pet. denied [mand. denied]), *cert. denied*, __ U.S. __, 128 S.Ct. 317 (2007). He claims he is being subjected to multiple punishments for the same offense. *See Langs v. State*, 183 S.W.3d 680, 685 (Tex. Crim. App. 2006) (three distinct types of double jeopardy claims are: (1) second prosecution for same offense after acquittal; (2) second prosecution for same offense after conviction; and (3) multiple punishments for same offense). Florance argues the civil findings in the 401st district court were punitive because they compelled forfeiture "of a perfectly lawful claim, and of the secured creditor status that accompanies that claim" in an ex parte proceeding.

However, as we explained in *Taylor*, the 401st district court entered the findings and conclusions following the statutory language in section 51.903. *Taylor*, 219 S.W.3d at 623. Those findings and conclusions were merely a ministerial determination that the purported lien was fraudulent under section 51.901(c); the district court made "no finding as to

any underlying claims of the parties involved, and expressly limit[ed] its findings of fact and conclusions of law to the review of a ministerial act." Further, the findings imposed no penalty on Florance; the findings simply directed the county clerk to file them in the same records as Florance's notice of lien. *See* TEX. GOV'T CODE ANN. § 51.903(e) (after reviewing documentation or instrument district judge shall enter appropriate finding of fact and conclusion of law, which must be filed and indexed in [⊥ 5] same class of records in which documentation or instrument was filed). Even if this civil finding amounted to a forfeiture, a civil in rem forfeiture is not punishment for purposes of double jeopardy. *See United States v. Ursery*, 518 U.S. 267, 278, 287 (1996). We conclude the civil proceedings in the 401st district court under government code chapter 51 were not so punitive either in purpose or effect as to transform the civil findings into a criminal penalty. *See Hudson v. United States*, 522 U.S. 93, 104 (1997). We overrule Florance's eighth point.

In his ninth point, Florance argues neither the original nor the amended information presents facts and circumstances constituting an offense. He appears to raise again his constitutional challenges to the statutes. We have already rejected Florance's constitutional challenges to the statutes and do not repeat that analysis here. *See Florance I*, 2007 WL 2460088, at *2-*6.

Subject to rare exceptions, a charging instrument tracking the language of the statute satisfies constitutional and statutory notice requirements. *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004). The amended information here tracked the

language of penal code section 32.49 and government code section 51.901(c)(2)(A) and (B) and gave additional information descriptive of the offense. We conclude the amended information provided sufficient notice for Florance to prepare a defense. *See Lawrence v. State*, 240 S.W.3d 912, 916 (Tex. Crim. App. 2007), *cert. denied*, __ U.S. __, 128 S.Ct. 2056 (2008). We overrule Florance's ninth point.

Florance's tenth point is inadequately briefed, but appears to challenge the county court at law's ability to "produce the demanded Venire." Florance fails to explain or show in the record how the composition or selection of the venire panel violated his right to an impartial jury. His comment that "[t]o understand the 'funny money' scam, which is discussed at length in the Motion to Quash, is to understand a great deal about 'this state', its relation to TX, and its distinction from Texas" presents nothing for review. *See* TEX. R. APP. P. 38.1; *Roberts*, 273 S.W.3d at 326 (inadequately [⊥ 6] briefed complaint properly overruled). We overrule Florance's tenth point.

Florance's eleventh point asserts the jury charge improperly shifted the burden of proof and did not instruct the jury on the State's burden to negate "exceptions." Throughout his brief, Florance asserts —without meaningful analysis or citation of relevant authority—that government code section 51.901(c)(2)(A) is an "exception" to the offense defined in penal code section 32.49. *See* TEX. PENAL CODE ANN. § 2.02(b) (State must negate existence of exception in charging instrument and prove beyond a reasonable doubt defendant's conduct does not fall within exception). Under penal code section 2.02(a), "[a]n exception to an offense in this code is so labeled

by the phrase: 'It is an exception to the application of . . . .'" TEX. PENAL CODE ANN. § 2.02(a). The offense at issue is defined in penal code section 32.49. *Id.* § 32.49. The language of section 32.49 does not define an exception to the offense using the required language of section 2.02(a). Thus, we reject the assertion that government code section 51.901(c) is an exception to the offense defined in penal code section 32.49. *See Hafley v. State*, 781 S.W.2d 642, 646 (Tex. App.—Dallas 1989, no pet.).

As we said in *Florance I*, under penal code section 32.49, "The prohibited conduct is the owning, holding, or being a beneficiary of a fraudulent lien or claim and refusing to execute the release of such lien within twenty-one days after receiving notice requesting a release of the lien or claim." *Florance I*, 2007 WL 2460088, at *4. A person who engages in the prohibited conduct "with intent to defraud or harm another" commits a class A misdemeanor. TEX. PENAL CODE ANN. § 32.49(a), (c). The purported lien or claim is one that "is fraudulent, as described by Section 51.901(c), Government Code." *Id.* § 32.49(a)(1); TEX. GOV'T CODE ANN. § 51.901(c). [2]

[2] As relevant here, section 51.901(c)2) states:

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if: ...

(2) the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and:

(A) is not a document or instrument provided for by the constitution or laws of this state or of the United States, [1 7]

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by

Government [1 7] code section 51.901 is not void for vagueness, "imposes no duty upon, nor does it prohibit any conduct of, a defendant charged under 32.49 for *refusing to release a lien*," and "in no way shifts the State's burden of proof under section 32.49 of the penal code to prove beyond a reasonable doubt that a defendant committed a criminal offense under that section by refusing to release such a lien." *Florance I*, 2007 WL 2460088, at *5.

The application paragraph of the charge included the elements of the offense as defined by penal code section 32.49, and included the relevant portions of government code section 51.901(c). It asked if the jury found beyond a reasonable doubt "that the purported lien was fraudulent, in that the defendant's document purported either to create a lien or assert a claim against property, or to create an interest in property; and that the filed document was neither provided for by the constitution or laws of this state or of the United States, nor created by the implied or express consent or agreement of the obligor, debtor, or the owner of the property, Brenda Taylor, or by an owner of an interest in the property, if an interest-owner's consent or agreement is required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person."

The jury charge instructed the jury on the law

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implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States; [sic]

TEX. GOV'T CODE ANN. § 51.901(c) (emphasis added).

applicable to the case and applied the law to the facts of the case. The jury was instructed that the burden of proof was on the State and never shifts to the defendant. The charge included the instruction regarding permissive presumptions set out in penal code section 2.05(a)(2). TEX. PENAL CODE ANN. § 2.05(a)(2). Thus, we again conclude [⊥ 8] penal code section 32.49 "is neither void for vagueness nor does it shift the State's burden of proving appellee's guilt of the charged offense beyond a reasonable doubt." *Florance I*, 2007 WL 2460088, at *6. We overrule Florance's eleventh point.

In his twelfth point, Florance asserts his sentence was illegal because there "was no evidence of any criminal violation from trial, and nothing submitted for sentencing was agreed to." The cases he cites involve the requirement for jury findings to support punishment enhancements and do not apply here because Florance's sentence was not enhanced. *See, e.g., Blakely v. Washington*, 542 U.S. 296 (2004). Florance was sentenced within the range of punishment for a class A misdemeanor. TEX. PENAL CODE ANN. § 12.21 (fine not to exceed $4,000; confinement in jail for term not to exceed one year; or both). We overrule Florance's twelfth point.

In his thirteenth point, Florance asks "[m]ay the trial court compel the defendant to agree to specific waiver language?" He refers to pretrial proceedings where he waived his right to representation of counsel, but objected to the language in the standard form used by the court for waiver of the right to counsel. *See* TEX. CODE CRIM. PROC. ANN. art. 1.051(g). Florance eventually signed the form under protest and conducted his own defense throughout

these proceedings. Florance does not contend he was denied the right to represent himself without counsel or that he did not knowingly or voluntarily waive his right to counsel. He objects only to the language in the form, but fails to show how he was harmed or that his substantial rights were affected. TEX. R. APP. P. 44.2(b). This argument presents nothing for review. We overrule Florance's thirteenth point.

In his fourteenth point, Florance argues, citing only civil cases and rules of civil procedure, that the district attorney and his assistants failed to prove their authority as agents of the State to prosecute this case. The district and county attorneys of Texas are authorized to represent the State in all criminal prosecutions. *See* TEX. CONST. art. V, § 21; TEX. CODE CRIM. PROC. ANN. arts. [1 9] 2.01-.02; *Saldano*, 70 S.W.3d at 876. A district attorney may employ, hire or retain any assistant prosecuting attorneys, or any other personnel, that he deems necessary for the proper operation and administration of his office. TEX. GOV'T CODE ANN. § 41.102. An assistant prosecuting attorney may "perform all duties imposed by law on the prosecuting attorney." *Id.* § 41.103(b).

The civil laws cited by Florance do not apply in this criminal proceeding. *See, e.g.*, TEX. CODE CRIM. PROC. ANN. art. 1.02 (code of criminal procedure governs all criminal proceedings); TEX. R. CIV. P. 2 (rules of civil procedure govern procedure in justice of the peace, county, and district courts in all actions of a civil nature). There is no authority requiring a criminal district attorney and his assistants to offer evidence of their authority to act as attorneys representing the State at the request of a defendant

in a criminal prosecution. We overrule Florance's fourteenth point.

Having overruled all of Florance's points on appeal, we affirm the trial court's judgment.

/s/ J Moseley
JIM MOSELEY
JUSTICE

Do Not Publish
TEX. R. APP. P. 47.2(b)
080984F.U05

2009 Aug 28—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

RICHARD JOHN FLORANCE, JR., Appellant	Appeal from the County Court at Law No. 3 of Collin County, Texas. (Tr.Ct.No. 002-81238-06). Opinion delivered by Justice Moseley. Justices O'Neill and Murphy participating.
NO. 05-08-00984-CR V.	
THE STATE OF TEXAS, Appellee	

Based on the Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

Judgment entered August 28, 2009.

/s/ J Moseley
JIM MOSELEY
JUSTICE

Rule 14.1(i)(ii)—Additional Orders

Court of Criminal Appeals

2010 Jan 13 – CCA refuses petition

[Watermark SEAL of THE STATE OF TEXAS]

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITAL STATION,
AUSTIN, TEXAS 78711

Wednesday, January 13, 2010
RE: Case No. PD-1714-09
COA#: 05-08-00984-CR
STYLE: FLORANCE, RICHARD JOHN, JR.

On this day, Appellant's Pro Se petition for discretionary review has been refused.

Louise Pearson, Clerk

RICHARD JOHN FLORANCE JR.
1908 VASSAR DRIVE
RICHARDSON TX 75081

[Pitney Bowes meter mark:
02 1M $ 00.28⁰
0004288372 JAN13 2010
MAILED FROM ZIP CODE 78701]

Transferee Court

2006 Jul 17—Jury Verdict (Transcript Excerpt)

[N.B. The **highlighting in bold** shows the orders.]

39
Trial on the Merits
July 17, 2009 – Vol. 7

[...] that you the jury have reached your verdict in this case. The juror that now holds the original papers is asked to hand those papers to the bailiff.

JUROR: (Indicating.)

THE COURT: Mr. Florance, if you'll please rise. We, the jury, find the defendant guilty of refusing to execute the release of a fraudulent lien or claim, as charged in the information. Sir, you may be seated.

Panel members, if this is your verdict, if you will please indicate now individually by raising your hands.

JURY: (Indicating.)

THE COURT: I see all of you have raised your hand. Thank you.

Mr. Florance, you've not filed any written election that, in this case in the event of a verdict of guilty, that the jury assess the penalty, have you?

MR. FLORANCE: No, sir.

THE COURT: You've not, have you?

MR. FLORANCE: No, sir.

THE COURT: Nor have you filed a written application for supervision, which would have the same effect, have you?

MR. FLORANCE: No, sir.

THE COURT: Very well. Well, panel members, [...]

Laura B. Ballard, CSR, RPR
Official Court Reporter, County Court at Law No. 3
(972) 548-3834

2006 Jul 17—Sentencing (Transcript Excerpt)

[N.B. The **highlighting in bold** shows the orders.]

36
Closing Statement by Mr. Richardson
July 17, 2009 – Vol. 8

And the State would ask for a $4000 fine, court costs, one year in jail probated for two years. State would ask for 100 hours of community service. And, Your Honor, based upon Robert Davis's testimony, we would ask for restitution in the amount of $20,700 -- $20,712.68 based upon the money that was expensed to Collin County. And Collin County duly hired Robert Davis to represent Brenda Taylor, since it was in her

official capacity and against her. And the County is out that money, Your Honor, and the State would ask for that much.

THE COURT: Thank you, Mr. Richardson.

MR. FLORANCE: Your Honor --

THE COURT: Yes, Mr. Florance.

MR. FLORANCE: I would move to make a motion for a new trial.

THE COURT: I call to your attention that the time for speaking is not at hand. If you'll just please remain there at your table.

MR. FLORANCE: Oh, yes, sir.

(Pause in proceedings.)

THE COURT: Now, a fine of $2000 is assessed and imposed. A jail term of 180 days is assessed and imposed. Neither the fine nor the jail term is suspended. The defendant is not placed on community supervision.

Mr. Florance --

MR. FLORANCE: Yes, sir.

THE COURT: – at this moment your bond is no longer sufficient to be at liberty.

MR. FLORANCE: Yes, sir.

THE COURT: You'll be required to furnish bond pending appeal, if it's your intention to

give notice of appeal.

MR. FLORANCE: It is.

THE COURT: And bail pending appeal is set at $2500, cash or surety bond.

It is the order, judgment and decree of the Court that you be remanded to the custody of the sheriff of Collin County and held until you pay the fine of $2000 and serve the sentence of 180 days.

Mr. Florance, please take notice that if this sentence is ever enforced, you may have the common and ordinary work-release privilege that inmates generally may have; but please do take notice that the administration of that privilege is entirely up to the sheriff of Collin County.

If you fail to adhere to the rules and regulations of the work-release program, the sheriff will cancel the privilege, and I won't intervene to rescind any action of cancellation he imposes for misconduct while on work release. Please take notice.

Quite a bit of inmates lose their privileges. I'm not going to intervene to rescind any action the sheriff takes canceling your privilege.

MR. FLORANCE: Yes, sir.

THE COURT: Mr. Florance, the detention staff is going to take you into custody when this hearing is over. About any post-verdict motions that you have, are they in writing?

MR. FLORANCE: Unfortunately, no, sir. I could prepare some for you if you would like.

THE COURT: Well, the occasion for seeking relief is best pursued if the motions are in writing.

MR. FLORANCE: Okay.

THE COURT: And I give you notice that I don't intend to grant any oral motion for new trial or oral motion in arrest of judgment.

MR. FLORANCE: Okay.

THE COURT: Do you have any questions to ask?

MR. FLORANCE: Can I file these later in the future?

THE COURT: Sir, you have unqualified and unlimited ability to file anything you wish to in the county clerk's office. I'm sure you are aware of that. Mr. Richardson, anything else?

MR. RICHARDSON: Nothing further, Your Honor.

THE COURT: Mr. Florance, anything else?

MR. FLORANCE: You said the bond, I just need to do the bond work with the bailiff?

THE COURT: Cash or surety bond. Notice will be given to the sheriff's office about the fact that you're entitled to release pending the

furnishing of bail in that amount.

MR. FLORANCE: Okay.

THE COURT: As a practical matter, giving attention to that is probably going to take a few hours.

MR. FLORANCE: Right. Where is that located? Where is the location for that?

THE COURT: Mr. Florance, you asked where is the location for that. The location for what, please?

MR. FLORANCE: For giving the bond. What's the process?

THE COURT: The sheriff's office will collect it from you –

MR. FLORANCE: Okay.

THE COURT: -- when you submit it to them.

MR. FLORANCE: Okay.

THE COURT: To their personnel, rather.

MR. FLORANCE: Okay. Thank you.

THE COURT: All right, sir. Thank you.

(Proceedings concluded, 4:25 p.m.)

Laura B. Ballard, CSR, RPR
Official Court Reporter, County Court at Law No. 3
(972) 548-3834

Transferor Court

2008 May 16—Self-Recusal (the transfer order)

2-81238-06
Cause No.

THE STATE OF TEXAS	IN THE COUNTY COURT
(Seal of)	AT LAW NO. 2 OF
vs.	COLLIN COUNTY,
(COLLIN COUNTY)	TEXAS
RICHARD JOHN FLORANCE, JR.	HON. JERRY LEWIS, PRESIDING

ORDER OF VOLUNTARY [RECUSAL]

On this date the defendant and an attorney for the state appeared in court for the first time' following a mandate from the Court of Appeals ordering that the case be returned to the trial court's docket and tried as charged by the Information.

Previously, the defendant filed a motion for dismissal and other matters. Prior to the hearing the presiding judge read the defendant's brief on his motion. Upon doing so, the judge determined he cannot be a fair and impartial judge in this particular case based on the nature and wording of the law underlying the offense.

Therefore, on his own motion, the judge voluntarily recuses himself and refers the case to the Local Administrative Judge for County Courts at Law for re-assignment. To even docket load, this judge will accept transfer [of] any case on the receiving court's trial docket in return per that

judge's choice.

A copy of this order was delivered to the defendant and the state's attorney in open court.

Date signed: May 16, 2008

/s/ Jerry Lewis
JERRY LEWIS

RECEIVED MAY 16, 2008:

/s/ Richard John Florance, Jr.
Defendant

/s/ Kelley Sullivan
Criminal Assistant District Attorney

ORDER OF VOLUNTARY [RECUSAL] **5/16/2008**

Transferee Court

2008 May 16—Post-transfer Notice to Appear

NOTICE TO APPEAR

Cause number
002-81238-06

In The County Court
at Law #3

The State of Texas Vs.
FLORANCE,RICHARD JOHN JR

of Collin County, Tx

Effective May 1, 2001, all defendants are required to be present in court for all settings.

You, the defendant, are hereby ordered to appear before The Honorable John O. Barry,County [sic] Court at Law #3, 1800 N. Graves, University Drive Courts, McKinney, Texas, 75069, on the 22nd day of May A.D. 2008, at 8:30 o'clock A.M., to answer criminal charges pending in that Court, to wit:

Refuse Execute Release Fraudulent Lien/Claim

and there remain until discharged by that Court.

Witness my official signature at McKinney, Texas this 16 day of May A.D. 2008.

STACEY KEMP, County Clerk
Collin County, Texas
By: _____
Deputy Clerk

It is a criminal offense to fail to appear in Court upon receipt of this notice or **to influence or coerce a witness to elude legal process, or to harm or**

to threaten to harm a prospective witness, or to prevent or delay anyone[']s service as a witness. [emphasis added]

[Spanish omitted]

You have the right to be represented by an attorney or represent yourself.

You may not reschedule a case by phone.

Come to court dressed appropriately. Shorts, revealing clothing, hats, or sunglasses are not allowed.

Pagers and phones must be turned off. Recording equipment and cameras are not allowed in the courtroom.

Newspapers are not allowed in the courtroom. Dispose of all food items, including gum, prior to entering the courtroom.

Hearings will not be set unless a motion with fiat has been filed. Evidentiary pretrial motions may be carried until the time of trial.

Change of address must be filed by you in person at the County Clerk[']s Office or by notarized letter with a copy of your driver's license. You are responsible for knowing your court date. You will not receive any further written notice from the court or the clerk.

Collin County[']s Website: www.co.collin.tx.us

Mailed to:
FLORANCE,RICHARD JOHN JR

1908 VASSAR DRIVE
RICHARDSON, TX 75081
ntc3v2.doc

(Seal of COUNTY COURT AT LAW
COLLIN COUNTY, TEXAS)

THE STATE OF TEXAS
COUNTY OF COLLIN

I, Stacy Kemp, County Clerk, Court [sic] Collin County, Texas Do hereby certify that the foregoing instrument of writing is a full, true and correct copy of the instrument as filed for record in my office the *16* day of *MAY*, 20 *08*
No. *2-81238-06*

Witness my hand and official seal at my office in McKinney, Texas this *24* day of *JUNE*, 20 *08*

Stacey Kemp, Collin County Clerk
Collin County, Texas
By: */s/ (illegible)*, Deputy

2008 May 22—Transcript Excerpts – Compelled Consent to Waiver

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 2-81238-06

THE STATE OF TEXAS	) IN THE COUNTY
	) COURT
vs.	) AT LAW NUMBER 3
	)
RICHARD JOHN FLORANCE, JR.	) OF COLLIN COUNTY,) TEXAS

COURT PROCEEDINGS

COPY

On the 22nd day of May, 2008, the following proceedings came on to be held in the above-entitled and numbered cause before the Honorable John O. Barry, Judge Presiding, held in McKinney, Collin County, Texas.

Proceedings reported by Computerized Stenotype Machine.

Laura B. Ballard, CSR, RPR
Official Court Reporter, County Court at Law No. 3
(972) 548-3834

P-R-O-C-E-E-D-I-N-G-S [4]

(Proceedings begin.)

[N.B. There were no witnesses called or sworn.]
[N.B. The **highlighting in bold** shows the orders. The two rejected documents referred to are in the "Additional Essential Materials" section (App. A).]
[N.B. The *italics* are the essence of Florance's position.]

THE COURT: State of Texas versus Richard John Florance, Jr. Sir, that's your name, Richard John Florance, Jr.?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Florance, may I ask, do you read and write the English language?

THE DEFENDANT: Yes, sir.

THE COURT: You appear to ably understand the English language. Indeed, you appear to be an American.

THE DEFENDANT: Yes.

THE COURT: This lady here is the court coordinator, Donna Strub. If I'm not mistaken, you've had the occasion to see her earlier today about your pending case.

THE DEFENDANT: Uh-huh.

THE COURT: Can you please report to me what it was you reported to me a few moments ago? If you recall what it was, or even if you don't recall, if you'll just tell me again what happened this

morning, Ms. Strub.

COURT COORDINATOR: I called Mr. Florance forward so that I could help with his case. I gave him the form that we use to have a choice --

THE COURT: Is this the form you're talking

[5]

about?

COURT COORDINATOR: Yes, it is.

THE COURT: The so-called form addressing the dangers and disadvantages of self-representation --

COURT COORDINATOR: That's the form.

THE COURT: -- as well as notice concerning financial inability to hire an attorney? That's the form you gave him?

COURT COORDINATOR: Yes, sir, I did.

THE COURT: Very well. Very well. Then what happened?

COURT COORDINATOR: Then I went over the three choices. One, he could hire an attorney; one, he could apply for a court-appointed attorney; third, he could represent himself and then he could speak to the D.A. about his case. And he said he was not going to sign anything.

THE COURT: Well, very well. Well, Mr. Florance, until you do respond to this, you're not free to leave. So when you are free –

THE DEFENDANT: Well, I don't have a problem responding to it. I just don't want to sign

anything.

THE COURT: Well, we require a response in writing, sir. We require it. In any event –

THE DEFENDANT: Okay.

THE COURT: – if you decline to respond in [6]

writing, very well; you're just not free to go.

THE DEFENDANT: Okay. All right. Well, give me the paper.

THE COURT: Well, I'm going to hand it back to her and she's going to have the conference with you that she would ordinarily have. I'm going to ask that you return to your chair and she'll be with you when she's able to.

THE DEFENDANT: Okay.

THE COURT: Very good. Thank you.

(Proceedings in recess.)

[N.B. 30-45 minutes later] [26]

THE COURT: Well, with the form that you have there, please make your one responsive statement without changing the notices.

THE DEFENDANT: Right.

THE COURT: Correction; without changing the language at the bottom of the page.

THE DEFENDANT: Would you repeat the question for me?

THE COURT: Yes. Please make your responsive statement. You see the words there, defendant's

statement?

THE DEFENDANT: Yes, sir; yes, sir.

THE COURT: There are three different choices.

THE DEFENDANT: Yes, sir.

THE COURT: Please make one choice and one [27]

choice only without changing any of the language that's on the form.

THE DEFENDANT: Oh, so just read the whole statement? Is that what you want me to do, or just say what I --

THE COURT: No, I wish for you to respond to the notices by making a statement.

THE DEFENDANT: Okay.

THE COURT: And there are three different possibilities. The first being, the first statement that you could make being, I intend to hire an attorney. That's one.

THE DEFENDANT: Yes, sir.

THE COURT: And, of course, the two others follow immediately beneath.

THE DEFENDANT: Okay.

THE COURT: I ask that you make only one responsive statement without changing the wording.

THE DEFENDANT: So read the wording -- Your Honor, I don't want -- I don't think consent can be compelled. And I don't want to -- this is a document of consent. And I don't want to consent

in the manner in which this is written. I don't have a problem with saying that I don't want an attorney, and that I'm not asking for the State to supply an attorney, and that I understand that

[28]

I would not be able to come back later and say, oh, I need to get an attorney and now your rulings are no good because I didn't have a right to counsel. I understand those issues.

And that's what I substantially tried to put into the notice, that statement that I gave you for your review. And I believe it substantially supplies what you're requesting in terms of what the Statute says at Article 1.051(f) and (g); (g) which says substantially in the following form, but not necessarily is required that it has to be this form.

THE COURT: I've already rejected the statement that you have drafted and signed.

THE DEFENDANT: Yes, sir. Can you tell me specifically what portions that you object to and I can perhaps modify them?

THE COURT: I decline to do so. I ask that you ask the court reporter to give to you what has been marked as, I think, Exhibit 1 or Court Exhibit 1. She'll hand it to you if you ask her for it. Please ask her for it.

THE DEFENDANT: Okay. Could you please hand me Exhibit 1, please?

COURT REPORTER: (Indicating.)
THE COURT: Now, please hand it to me.

[29]

THE DEFENDANT: Let the record show that the Judge has asked me to hand this to him. (Indicating.)

(Pause in proceedings.)

THE COURT: In just a moment I'm going to ask you to take it back.

THE DEFENDANT: Yes, sir.

THE COURT: I'm going to ask you to put it on top of the podium. And I require that you not change its content in any way.

THE DEFENDANT: Okay.

THE COURT: Please put it on top of the podium.

THE DEFENDANT: (Indicating.)

THE COURT: I'm holding up my copy. I've added pencil marks, a pair of quotation marks. I'm pointing to the first one right there. I'm sure you can see it.

THE DEFENDANT: Yes, sir.

THE COURT: And I'm pointing to the second one. It's at the end of the sentence.

THE DEFENDANT: Yes, sir.

THE COURT: Would you please read that sentence and understand it in the following way: The period is being moved so that it will now appear right after the word right; R-I-G-H-T.

[30]

THE DEFENDANT: Okay.

THE COURT: And everything in quotation marks is now omitted. It has no application. Irrelevant. Deleted.

THE DEFENDANT: Yes, sir.

THE COURT: Just take a moment to reread the sentence as I've asked you to.

THE DEFENDANT: I intend to be --

THE COURT: It would read as follows.

THE DEFENDANT: Oh.

THE COURT: I desire to waive that right. Period.

THE DEFENDANT: Oh, yes.

THE COURT: That's how the sentence would now read.

THE DEFENDANT: Oh, that sentence; yeah, good.

THE COURT: As rewritten -- rather, as edited --

THE DEFENDANT: Right.

THE COURT: -- does that make the existing sentence immune from your concern or your objection?

THE DEFENDANT: Yes, sir.

(Pause in proceedings.)

THE COURT: Now, would you please take it and [31]

hand it back to the court reporter?

THE DEFENDANT: (Indicating.)

(Pause in proceedings.)

THE COURT: It may be that the absence of that language renders your statement ineffectual.

THE DEFENDANT: Oh, the removal of the --

THE COURT: Yes, sir. It may be. This process is going to continue regardless of what you ask for. I give you notice of that because it is the prosecuting attorney that, by the filing of an accusation, provides the force or the pressure that makes this process operate. And I've received no notice from the prosecuting attorney otherwise.

So regardless of what you ask for, or whether you ask, this process is going to operate.

THE DEFENDANT: I received that notice. I understand where you stand.

THE COURT: Well, very well. Very well. The Legislature itself has provided for those words –

THE DEFENDANT: I understand.

THE COURT: – to be in the notice.

THE DEFENDANT: And I do believe it's that same section there that we were talking about earlier, 1.051(g). I believe that's correct.

THE COURT: I believe you're right. I

[32]

believe you're right. Well, do you decline to sign?

THE DEFENDANT: I'll sign.

THE COURT: Well, very well. Please do.

THE DEFENDANT: This is my -- this is the copy

that I have --

THE COURT: Well --

THE DEFENDANT: -- that you gave me?

THE COURT: – what I've given you is the original court document and I've asked you not to modify it.

THE DEFENDANT: Oh, I apologize. I thought --

THE COURT: No, no. Have you changed it?

THE DEFENDANT: I put the quotes in like you did for the exhibit.

THE COURT: I see. Is that a pencil or pen that you have there?

THE DEFENDANT: That's a pen unfortunately. I'm sorry.

THE COURT: You might remember that I asked you not to change it.

THE DEFENDANT: Yes, sir. I thought that you had --

THE COURT: I know you did. You might remember that I asked you not to.

[33]

THE DEFENDANT: Yes, sir.

(Pause in proceedings.)

THE DEFENDANT: And when you asked me if I'm willing to sign it, I assumed you were talking about the document that's on the exhibit.

(Pause in proceedings.)

THE COURT: No, I'm talking about the one that you have in your possession.

THE DEFENDANT: Oh.

THE COURT: The one that you have control over and are able to place the tip of your pen on. That's the one I'm talking about.

THE DEFENDANT: Oh, I'm sorry, sir. I thought you were speaking of the one as we had went through the modification.

THE COURT: No, no. I'm going to give you another one.

THE DEFENDANT: Okay.

THE COURT: Please take it. This is the original now.

THE DEFENDANT: I won't write on it.

THE COURT: If it's your intention to sign responsively, please, without changing anything about the notice, please do so now.

THE DEFENDANT: If I do not wish to sign,

[34]

what -- is there any consequences?

THE COURT: Yes.

THE DEFENDANT: Could you tell me what those would be?

THE COURT: Yes. I will ask you to have a seat in the gallery –

THE DEFENDANT: And I can't leave.

THE COURT: – and you'll stay here until you do. We're open from 8:30 to 5:00, Monday

through Friday.

THE DEFENDANT: Okay. As long as it's in the record that --

THE COURT: Oh, I assure you, sir, there's a record being made of everything that's happening right now.

THE DEFENDANT: Right. Yes, sir. Okay. (Indicating.) Do we have a case number?

THE COURT: I'll give you the number. 002-81238; I'll repeat it, 81238 --

THE DEFENDANT: Uh-huh.

THE COURT: -- 2006.

(Pause in proceedings.)

THE COURT: May I have it now, please?

THE DEFENDANT: (Indicating.) Yes, sir.

THE COURT: Now, it's not checked, so I'll hand it back to you.

THE DEFENDANT: Oh; oh, I apologize.

[35]

(Indicating.)

THE COURT: I'm going to read what appears to be your statement back to you.

I intend to be myself. I understand my right to have an attorney appointed to represent me free of charge if I am financially unable to hire one. I desire to waive that right and request that the Court proceed with my case without an attorney being appointed for me. I hereby waive my right

to legal representation.

Mr. Florance, is that your statement?

THE DEFENDANT: Um --

THE COURT: Please address me and not the court reporter.

THE DEFENDANT: Oh, okay. Could you say what was -- was the be in there or the represent?

THE COURT: I'll repeat the first sentence of what appears to be your statement. I intend to be myself.

THE DEFENDANT: Okay.

THE COURT: I give you notice that the word be is synonymous with the word represent.

THE DEFENDANT: It's not my intention.

THE COURT: I give you notice that the word be, as you're using it –

THE DEFENDANT: Yes, sir.

THE COURT: – means represent. I give you

[36]

notice of that. That's what the hearer of your words in the eyes of the law understands your word to mean. They're synonymous. I give you notice of that.

THE DEFENDANT: I object to that meaning, but I understand and hear the notice.

THE COURT: Very well.

THE DEFENDANT: Um. So --

THE COURT: Objection overruled.

THE DEFENDANT: And that statement is signed in that fashion under duress; the fact that I can't leave if I don't sign the paper. So I did sign that document and make that check mark.

THE COURT: Very well. Do you have any questions to ask?

THE DEFENDANT: No, sir.

THE COURT: In just a moment when we finish, I'll ask that you have a seat back in the gallery. The coordinator will assist you and the assistant district attorney in preparing a scheduling order. Likely, the time for the trial will be 8:30 on Monday morning or 8:30 on a Wednesday morning. Please be in the courtroom at the appointed time on the given day. Please don't be late. You will leave here with your copy of the scheduling order.

THE DEFENDANT: Okay.

THE COURT: Thank you. Please return to your

[37]

chair. We're off the record now.

(Proceedings concluded.)

2008 Jun 9—Record-tampering Order to commingle Habeas with underlying case

County Clerk directed to file in Cause No. 2-81238-06.

John O. Barry
Judge
6.24.08

FILED
COUNTY COURTS AT LAW
2008 JUN 9 AM 9: 43

STACEY KEMP
COUNTY CLERK
COLLIN COUNTY, TEXAS
By: */s/ [JM]* Deputy

Cause No. _____

RICHARD JOHN FLORANCE, JR.,	§
Applicant,	§
	§
v.	§
	§
COUNTY COURT AT LAW NO. 2	§
OF COLLIN COUNTY, and/or	§
COUNTY COURT AT LAW	§
NO. 3 OF COLLIN COUNTY,	§
Custodian(s),	§
Defendant(s).	§

§ In The
§
§ COUNTY COURT AT LAW
§
§ NO. _____
§
§ OF COLLIN COUNTY
§
§
§
§ COLLIN COUNTY, TEXAS

FLORANCE'S PRE-TRIAL APPLICATION FOR A WRIT OF HABEAS CORPUS

Rule 14.1(i)(iii)—Rehearing

No rehearing sought or granted.

Rule 14.1(i)(iv)—Judgment of different date

None.

Texas Penal Code

Sec. 32.49. REFUSAL TO EXECUTE RELEASE OF FRAUDULENT LIEN OR CLAIM.

(a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent, as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, refuses to execute the release on the request of:

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 4, eff. May 21, 1997.

SUBCHAPTER J. CERTAIN FRAUDULENT RECORDS OR DOCUMENTS

Sec. 51.901. FRAUDULENT DOCUMENT OR INSTRUMENT.

(a) If a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b) A clerk shall provide written notice under Subsection (a):

(1) not later than the *second business day after* the date that the document or instrument is offered or submitted for filing or for filing and recording; or

(2) if the document or instrument has been previously filed or recorded, not later than the *second business day after* the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or

(B) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A); or

(2) the document or instrument purports to create a lien or assert ***a claim against real or personal property or an interest in real or personal property*** and:

(A) is *not* a document or instrument *provided for* by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest

in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States.

(d) If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

(1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; and

(3) forward any additional documentation received to the county or district attorney.

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997. Amended by Acts 2005, 79th Leg., ch. 407, Sec. 1, eff. Sept. 1, 2005.
(all emphasis added)

Sec. 51.902. ACTION ON FRAUDULENT JUDGMENT LIEN.

(a) A person against whom a purported judgment was rendered who has reason to believe that a document previously filed or recorded or submitted for filing or for filing and recording is fraudulent may complete and file with the district clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of a Documentation Purporting to Create a Judgment Lien

Now Comes (name) and files this motion requesting a judicial determination of the status of a court, judicial entity, or judicial officer purporting to have taken an action that is the basis of a judgment lien filed in the office of said clerk, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the person against whom the purported judgment was rendered.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed or filed and recorded the documentation attached hereto and containing (number) pages. Said documentation purports to have been rendered on the basis of a judgment, act, order, directive, or process of a court, judicial entity, or judicial officer called therein "(*name of purported court, judicial entity, or judicial officer*)" against one (name of purported debtor).

III.

Movant alleges that the purported court, judicial entity, or judicial officer referred to in the attached documentation is one described in Section 51.901(c)(1), Government Code, as not legally created or established under the constitution or laws of this state or of the United States, and that the documentation should therefore not be accorded lien status.

IV.

Movant further attests that the assertions contained herein are true and correct.

PRAYER

Movant requests the court to review the attached documentation and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct." Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas
Notary's printed name:

_____

My commission expires:

_____

(c) A motion filed under this section may be ruled on by a ***district*** judge having jurisdiction over real property matters in the county where the subject documentation was filed. **The court's finding may be made solely on a review of the documentation attached to the movant's motion and without hearing any testimonial**

evidence.[3] **The court's review may be made ex parte without delay or notice of any kind.**[4] **The court's ruling on the motion, in the nature of a finding of fact and a conclusion of law, is unappealable if it is substantially similar to the form suggested in Subsection (g).**

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed.

(f) The county clerk may not collect a filing fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

MISC. DOCKET NO. _____

In Re: A Purported Judgment Lien Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

[3] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. *RJF*]

[4] [N.B. Even summary judgment requires Notice. *RJF*]

Judicial Finding of Fact and Conclusion of Law Regarding a Documentation Purporting to Create a Judgment Lien

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion verified by affidavit of (name) and the documentation attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation attached to the motion herein refers to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. This judicial finding and conclusion of law does not constitute a finding as to any underlying claims of the parties.

_____ The documentation attached to the motion herein DOES NOT refer to a legally constituted court, judicial entity, or judicial officer created by or established under the constitution or laws of this state or of the United States. There is no valid judgment lien created by the documentation.

This court makes no finding as to any underlying claims of the parties involved and expressly limits its finding of fact and conclusion of law to a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as

the subject documentation was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject document.

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.
(all emphasis added)

Sec. 51.903. ACTION ON FRAUDULENT LIEN ON PROPERTY.

(a) A person who is the purported debtor or obligor or who owns real or personal property or an interest in real or personal property and who has reason to believe that the document purporting to create a lien or a claim against the real or personal property or an interest in the real or personal property previously filed or submitted for filing and recording is fraudulent may complete and file with the ***district*** clerk a motion, verified by affidavit by a completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, that contains, at a minimum, the information in the following suggested form:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim

Now Comes (name) and files this motion requesting a judicial determination of the status of documentation or an instrument purporting to create an interest in real or personal property or a lien or claim on real or personal property or an interest in real or personal property filed in the office of the Clerk of (county name) County, Texas, and in support of the motion would show the court as follows:

I.

(Name), movant herein, is the purported obligor or debtor or person who owns the real or personal property or the interest in real or personal property described in the documentation or instrument.

II.

On (date), in the exercise of the county clerk's official duties as County Clerk of (county name) County, Texas, the county clerk received and filed and recorded the documentation or instrument attached hereto and containing (number) pages. Said documentation or instrument purports to have

created a lien on real or personal property or an interest in real or personal property against one (name of purported debtor).

III.

Movant alleges that the documentation or instrument attached hereto is fraudulent, as defined by Section 51.901(c)(2), Government Code, and that the documentation or instrument should therefore not be accorded lien status.

IV.

Movant attests that assertions herein are true and correct.

V.

Movant does not request the court to make a finding as to any underlying claim of the parties involved and acknowledges that this motion does not seek to invalidate a legitimate lien. Movant further acknowledges that movant may be subject to sanctions, as provided by Chapter 10, Civil Practice and Remedies Code, if this motion is determined to be frivolous.

PRAYER

Movant requests the court to review the attached documentation or instrument and enter an order determining whether it should be accorded lien status, together with such other orders as the court deems appropriate.

Respectfully submitted,

_____

(Signature and typed name and address)

(b) The completed form for ordinary certificate of acknowledgment, of the same type described by Section 121.007, Civil Practice and Remedies Code, must be as follows:

THE STATE OF TEXAS

AFFIDAVIT

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared _____, who, being by me duly sworn, deposed as follows:

"My name is _____. I am over 21 years of age, of sound mind, with personal knowledge of the following facts, and fully competent to testify.

I further attest that the assertions contained in the accompanying motion are true and correct." Further affiant sayeth not.

_____

SUBSCRIBED and SWORN TO before me, this _____ day of _____, _____.

_____

NOTARY PUBLIC, State of Texas

Notary's printed name:

_____

My commission expires:

_____

(c) A motion under this section may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. **The court's finding may be made solely on a review of the documentation or instrument attached to the motion and without**

hearing any testimonial evidence. [5] **The court's review may be made ex parte without delay or notice of any kind.** [6] An appellate court shall expedite review of a court's finding under this section.

(d) The district clerk may not collect a filing fee for filing a motion under this section.

(e) After reviewing the documentation or instrument attached to a motion under this section, the district judge shall enter an appropriate finding of fact and conclusion of law, which must be filed and indexed in the same class of records in which the subject documentation or instrument was originally filed. A copy of the finding of fact and conclusion of law shall be sent, by first class mail, to the movant and to the person who filed the fraudulent lien or claim at the last known address of each person within seven days of the date that the finding of fact and conclusion of law is issued by the judge.

(f) The county clerk may not collect a fee for filing a district judge's finding of fact and conclusion of law under this section.

(g) A suggested form order appropriate to comply with this section is as follows:

MISC. DOCKET NO. _____

In Re: A Purported Lien or Claim Against (Name of Purported Debtor)	In the _____ Judicial District In and For _____ County, Texas

[5] [N.B. *Cf.* TEX. R. CIV. P. 166a; FED. R. CIV. P. 56. *RJF*]

[6] [N.B. Even summary judgment requires Notice. *RJF*]

Judicial Finding of Fact and Conclusion of Law
Regarding a Documentation or Instrument
Purporting to Create a Lien or Claim

On the (number) day of (month), (year), in the above entitled and numbered cause, this court reviewed a motion, verified by affidavit, of (name) and the documentation or instrument attached thereto. No testimony was taken from any party, nor was there any notice of the court's review, the court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested in the court under Subchapter J, Chapter 51, Government Code.

The court finds as follows (only an item checked and initialed is a valid court ruling):

_____ The documentation or instrument attached to the motion herein *IS asserted against real or personal property or an interest in real or personal property* and:

(1) IS provided for by specific state or federal statutes or constitutional provisions;

(2) IS created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by consent of an agent, fiduciary, or other representative of that person; or

(3) IS an equitable, constructive, or other lien imposed by a court of competent jurisdiction created or established under the constitution or laws of this state or of the United States.

_____ The documentation or instrument attached to the motion herein:

(1) IS NOT provided for by specific state or federal statutes or constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this state or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the constitution or laws of this state or the United States; ***or***

(4) IS NOT asserted against real or personal property or an interest in real or personal property. [7] There is no valid lien or claim created by this documentation or instrument.

This court makes no finding as to any underlying claims [8] of the parties involved, and expressly limits its finding of fact and conclusion of law to the review of a ministerial act. The county clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the court directs the county clerk to index it using the same names that were used in indexing the subject documentation or instrument.

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[7] [N.B. So, what are we here for, then? *RJF*]

[8] [N.B. These orders ***do*** go ***directly*** to the merits of the lien/claim; here, without Notice, opportunity to be heard, etc. *RJF*]

SIGNED ON THIS THE _____ DAY OF _____.

_____
DISTRICT JUDGE
_____ JUDICIAL DISTRICT
_____ COUNTY, TEXAS

Added by Acts 1997, 75th Leg., ch. 189, Sec. 14, eff. May 21, 1997.

(all emphasis added)

Rule 14.1(i)(vi)—Additional Essential Materials

2006 Jun 23—A pretrial information sheet

CASE#/002-81238-06 CJ4B171

✱ *Republic of Texas* ✱

********** *NR*

NAME/FLORANCE RICHARD JOHN JR
****

ADDR/ 1908 VASSAR DRIVE RICHARDSON TX
SEX/M RAC/W DOB/ 8/19/58
HT/508 WT/155 HAIR/BRO EYES/BRO
DL#/TX [Number in original is omitted here]
SSN/
ORIGINAL CHARGE/ Refuse Execute Release
Fraudulent Lien/Claim
WARRANT FOR/ CAPIAS,
BOND/ 500.00
ISSUED BY/ Lewis ON 3/27/04

2699	*TCIC*
	LTR

FILED
COUNTY COURT AT LAW
JUN 2 3 2006
BRENDA TAYLOR CLERK
COLLIN COUNTY, TEXAS
BY _____ DEPUTY

2006 Jul 13—RJF's Trial Ex. 4-106 – 401st District Court's Findings and Conclusions (Double Jeopardy?)

FILED
06 JUL 13 AM 8:58
HANNAH KUNKLE
DISTRICT CLERK
COLLIN COUNTY, TEXAS
By /s/ DEPUTY

FILED
COUNTY COURT AT LAW
2006 JUL 13 AM 10:33
CLERK
COLLIN COUNTY, TEXAS
By /s/ Deputy [9]

MISCELLANEOUS DOCKET NO.
401-02217-06

	§	IN THE DISTRICT
	§	COURT
IN RE: A PURPORTED	§	
LIEN OR CLAIM	§	*401st* JUDICIAL
AGAINST CLERK	§	DISTRICT
BRENDA TAYLOR	§	
	§	COLLIN COUNTY,
	§	TEXAS

JUDICIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A DOCUMENT PURPORTING TO CREATE A LIEN

[9] [N.B. Filestamp of the conformed copy filed in the County Court. *See* No. 06-777 *RJF*]

On this the 13th day of July, 2006, in the above-entitled and numbered cause, this Court reviewed a motion, verified by affidavit, of Collin County Clerk Brenda Taylor and the documentation attached thereto, No testimony was taken from any party, nor was there any notice of the Court's review, the Court having made the determination that a decision could be made solely on review of the documentation or instrument under the authority vested the Court under Subchapter j, Chapter 51 TEXAS GOVERNMENT CODE.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED THAT after reviewing Collin County Clerk Brenda Taylor's MOTION FOR JUDICIAL REVIEW OF DOCUMENTATION OR INSTRUMENT PURPORTING TO CREATE A LIEN OR CLAIM and documentation, the Court hereby **FINDS** that the documentation ["FLORANCE'S FIRST NOTICE OF LIEN"] is fraudulent as defined by TEXAS GOVERNMENT CODE §51.901(c) and:

(1) IS NOT provided for by specific State or Federal statutes or Constitutional provisions;

(2) IS NOT created by implied or express consent or agreement of the obligor, debtor or the owner of the real or personal property or an interest in the real or personal property, if required under the law of this State or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person;

(3) IS NOT an equitable, constructive, or other lien imposed by a court of competent jurisdiction created by or established under the Constitution or laws of this State or the

United States;

(4) IS NOT [10] asserted against real or personal property or an interest in real or personal property. There is no valid lien or claim created by "FLORANCE'S FIRST NOTICE OF LIEN".

[1 2]

This Court makes no finding as to any underlying claims of the parties involved, and expressly limits its findings of fact and conclusions of law to the review of a ministerial act. The County clerk shall file this finding of fact and conclusion of law in the same class of records as the subject documentation or instrument was originally filed, and the Court directs the County Clerk to index it using the same names that were used in indexing the subject documentation or instrument.

Signed this the *13* day of *July*, 2006

/s/ Mark J. Rusch
DISTRICT COURT JUDGE

[10] [N.B. "IS NOT" tracks the *form*, exactly. West Virginia copied this exactly. Kansas fixed this part of it. *RJF*]

2008 May 22—RJF's (hand-)written waiver language

Notice of Defendant's Statement

I am competent to defend this case without an attorney.

I voluntarily and intelligently waive my right to counsel. Art. 1.051(f).

I am not indigent.

I reserve all my rights not specifically waived.

May 22, 2008

/s/ Richard John Florance Jr.
RICHARD JOHN FLORANCE, JR.

Received from defendant Richard John Florance, Jr. in open court on Thursday, May 22, 2008

/s/ John O. Barry *5.28.08*
John O. Barry
Judge Presiding

RECEIVED
MAY 22 2008
County Court at Law 3

2008 May 22—Compelled waiver language—Exhibit 1 in the 22 May transcript

NOTICE CONCERNING DANGERS AND DISADVANTAGES OF SELF REPESENTATION [sic] And NOTICE CONCERNING FINANCIAL INABILITY TO HIRE AN ATTORNEY

To the defendant:

"You do not have to have an attorney. The Judge will not require that you hire one or that one be appointed to represent you. The Judge will permit you to give up the right to be represented by an attorney if you understand these notices."

"If you are charged with an offense, an attorney would help you evaluate the charge pending against you, the strengths and weaknesses of the evidence against you, any defenses you might have, your plea to the charge, whether you should assert your right

to trial-by-jury, whether you should testify or remain silent, post-judgment processes, and the process for appeal. Your attorney would advance your position at all phases of this proceeding, and ensure that the State of Texas shouldered all required legal burdens. With no attorney, you will face extreme difficulty and danger when representing yourself. It is doubtful that you could represent yourself as effectively as an attorney could. The prosecuting attorney is a trained attorney with knowledge of the law that you lack."

"If you are charged with violating a condition of probation, an attorney would help you evaluate the strength of the charge, your plea, and any defenses you might have, whether you should testify, the alternatives available to the judge, and the process for appeal. With no attorney, you will face extreme difficulty and danger, and it is doubtful that you could represent yourself as effectively as your attorney could. The prosecuting attorney is an attorney with knowledge of the law that you lack."

"If you are financially unable to hire an attorney, you have the right to have an attorney appointed to represent you free of charge. You may become required to reimburse the county for monies paid by the court to such an appointed attorney" - --

Judge Presiding
County Court at Law No. 3

Defendant's Statement

I understand and acknowledge receipt of these notices from the judge and make the following statement:

☐ I intend to hire an attorney.

☐ I ask that an attorney be appointed.

☐ I intend to ~~represent~~ ^ *be* myself. I understand my right to have attorney appointed to represent me free of charge if I am financially unable to hire one. I desire to waive that right ^ " and request that the Court proceed with my case without an attorney being appointed for me. ^ " I hereby waive my right to legal representation.

_____

Print Defendant's Last Name

_____

Print Defendant's First Name

_____

Today's Date

_____

Defendant's Signature

_____

Case Number(s)

Appendix B—Round 1

Appellate Court

2007 Aug 31—Opinion

REVERSE and REMAND; Opinion issued August 31, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-00088-CR

THE STATE OF TEXAS, Appellant
v.

RICHARD FLORANCE, Appellee

On Appeal from the County Court at Law No. 2
Collin County, Texas
Trial Court Cause No. 002-81238-06

OPINION

Before Chief Justice Thomas, and Justices Richter and Lagarde [1]
Opinion by Justice Lagarde

This is an appeal by the State of the trial court's January 3, 2007 written order granting appellee

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[1] The Honorable Sue Lagarde, Justice, Court of Appeals, Fifth District of Texas at Dallas, Retired, sitting by assignment.

Richard Florance's motion to dismiss the information in the case of *State of Texas v. Richard John Florance*. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1) (Vernon 2006). The issue we are asked to decide is whether the trial court erred in dismissing this case based on its conclusion the statute is unconstitutional as applied to appellee. [2] Because we conclude the trial court reversibly erred in its legal conclusion that the statute is unconstitutional as applied, we reverse and remand this case to the trial court to be reinstated on its docket and for further proceedings consistent with this opinion. [3]

Background

Appellee was required to pay a $129 fee for preparation of a clerk's record for an appeal in a civil suit on behalf of his daughter. Finally, being faced with dismissal of the appeal if he did not pay the fee,

---

[2] The trial court's written dismissal order states specifically, "The court concludes that Section 32.49 of the Penal Code as it applied to this case, coupled with its reference and tying to Section 51.901(c) of the Government Code is and are void for vagueness. The court further concludes this defendant in this case is being denied due process by the statute's shifting the burden of proof in a criminal case."

[3] In April 2007, this Court issued an opinion involving the same appellee in cause number 05-06-00992-CV styled *In re A PURPORTED LIEN OR CLAIM AGAINST Collin County Clerk Brenda Taylor*. Concluding the "purported lienholder" failed to preserve for appellate review his claim that government code provisions allowing ex parte review of an allegedly fraudulent lien violated his right to due process, where purported lienholder did not bring this claim to the attention of the trial court, this Court affirmed the trial court's "Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien." The sections of the government code at issue in that case were sections 51.901 and 51.903. *See* TEX. GOV'T CODE ANN. §§ 51.901, 51.903 (Vernon 2005 & Supp. 2006).

appellee paid the fee. Three days later, appellee filed his "First Notice of Lien" against Collin County Clerk Brenda Taylor in the amount of $129. Appellee was advised, in writing, by an attorney on behalf of Collin County, the purported lien was illegal. Demand was made that he release the lien within twenty-one days. When appellee did not release the lien within twenty-one days, as demanded, the State charged appellee by information with refusal to execute release of a fraudulent lien or claim, a class A misdemeanor. *See* TEX. PEN. CODE ANN. § 32.49 (Vernon 2003).

The record is replete with various pretrial motions filed by appellee. In short, appellee argued below, and continues to argue on appeal, that section 32.49 of the Texas Penal Code is unconstitutional because section 51.901(c) of the Texas Government Code, referenced in penal code section 32.49, improperly shifts the burden of proof from the State to the appellee, requiring appellee to prove his innocence. This, appellee contends, violates his due process. *See id.*; TEX. GOV'T CODE ANN. § 51.901(c) (Vernon 2005).

The trial court agreed with appellee. [4] After granting the State's motion to amend the [⊥ 3]

[4] This is a reasonable deduction from the trial court's comment, "[The statute] creates a circumstance where the defendant is presumed guilty. The legislature's intent and scheme here. Mr Fredericks, has [as?] voiced on their behalf, is that the person, once he's shown to have filed this piece of paper, in a case like this, that it is presumed to be fraudulent." Moreover, the trial court's written order specifically states, "The court finds the presumption of fraud language creates a trial, if allowed to go forward, in which the defendant would be required to prove himself innocent."

information, the trial court entered a written order dismissing the amended information. This State's appeal ensued. *See* TEX. CODE CRIM. PROC. ANN. art. 44.01(a)(1).

On appeal, the State contends section 32.49 of the penal code is not unconstitutionally vague, nor does it impermissibly shift the burden of proof to a defendant. The State contends the statute clearly sets out what constitutes a fraudulent lien--one that is not authorized by state or federal law, consent of the parties, or a court with jurisdiction. The State further contends the permissive presumption is a rational one, does not bind the fact finder, and does not require rebuttal by the defendant; consequently, the permissive presumption does not violate a defendant's due process right by improperly shifting the State's burden of proof to the defendant.

Standard of Review

Resolution of the issue before us does not turn on an evaluation of the credibility and demeanor of a witness; therefore, the trial court was in no better position than are we to make the required determination. We, therefore, review the issue before us de novo. *State v. Moff*, 154 S.W.3d 599, 601 (Tex. Crim. App. 2004); *Goodrich v. State*, 156 S.W.3d 141, 145 (Tex. App.—Dallas 2005, pet. ref'd).

The challenged section of the Texas Penal Code is set out below:

> § 32.49. Refusal to Execute Release of Fraudulent Lien or Claim
>
> (a) A person commits an offense if, with intent to defraud or harm another, the person:

(1) owns, holds, or is the beneficiary of a purported lien or claim asserted against real or personal property or an interest in real or personal property that is fraudulent as described by Section 51.901(c), Government Code; and

(2) not later than the 21st day after the date of receipt of actual or written notice sent by either certified or registered mail, return receipt requested, to the person's last known address, or by telephonic document transfer to the recipient's current telecopier number, requesting the execution of a release of the fraudulent lien or claim, [1 4] refuses to execute the release on the request of

(A) the obligor or debtor; or

(B) any person who owns any interest in the real or personal property described in the document or instrument that is the basis for the lien or claim.

(b) A person who fails to execute a release of the purported lien or claim within the period prescribed by Subsection (a)(2) is presumed to have had the intent to harm or defraud another.

(c) An offense under this section is a Class A misdemeanor.

The challenged section of the Texas Government Code, referenced in section 32.49 of the penal code is set out below:

§51.901. Fraudulent Document or Instrument [5]

(a) if a clerk of the supreme court, clerk of the court of criminal appeals, clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk has a reasonable basis to believe in good faith that a document or instrument previously filed or recorded or offered or submitted for filing or for filing and recording is fraudulent, the clerk shall:

(1) if the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of a purported court, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person against whom the purported judgment, act, order, directive, or process is rendered; or

(2) if the document or instrument purports to create a lien or assert a claim on real or personal property or an interest in real or personal property, provide written notice of the filing, recording, or submission for filing or for filing and recording to the stated or last known address of the person named in the document or instrument as the obligor or debtor and to any person named as owning any interest in the real or personal property described in the document or instrument.

(b) A clerk shall provide written notice under Subsection (a):

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[5] Even though one sub-section of (c) is referenced, we set out the entire section for purposes of context.

(1) not later than the second business day after the date that the document or instrument is offered or submitted for filing or for filing [⊥ 5] and recording or

(2) if the document or instrument has been previously filed or recorded, not later than the second business day after the date that the clerk becomes aware that the document or instrument may be fraudulent.

(c) For purposes of this section, a document or instrument is presumed to be fraudulent if:

(1) the document is a purported judgment or other document purporting to memorialize or evidence an act, an order, a directive, or process of:

(A) a purported court or a purported judicial entity not expressly created or established under the constitution or the laws of this state or of the United States; or

(B) a purported judicial officer of a purported court or purported judicial entity described by Paragraph (A); or

(2) the document or instrument purports to create a lien or assert a claim against real or personal property or an interest in real or personal property and:

(A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;

(B) is not created by implied or express consent or agreement of the obligor, debtor,

or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or

(C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution or laws of this state or of the United States.

(d) If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

(1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, such as a contract or other document that contains the alleged debtor or obligor's signature; [6] and [⊥ 6]

(3) forward any additional documentation

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[6] [N.B. It's interesting that a clerk acting in good faith ***may*** demand proof of an underlying agreement in response to a document purporting to create a lien. *But cf. Florance v. comm'r*, T.C. Memos. 2005-60, -61 (which just happen to be the rulings that ignited DAVIS at the threshold); *Tello v. comm'r*, 410 F 3d 743 (5th Cir. 2005); *Stearman v. comm'r*, T.C. Memo. 2005-39, 436 F.3d 533 (5th Cir. 2006) *RJF*]

received to the county or district attorney.

TEX. GOV'T CODE ANN. § 51.901.

Applicable Law

When we are confronted with an attack upon the constitutionality of a statute, we presume the statute is valid and that the Legislature has not acted unreasonably or arbitrarily. *Ex parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978). The burden rests upon the individual who challenges the statute to establish its unconstitutionality. *Id.* In the absence of contrary evidence, we will presume the legislature acted in a constitutionally sound fashion. *Rodriguez v. State*, 93 S.W.3d 60, 69 (Tex. Crim. App. 2002). [7] If a statute does not substantially implicate

[7] [n.6 in the original.] The reporter's record in this case consists of six volumes; volume 1 is entitled "Master Index." The Master Index, in turn, shows volume 2 to contain "(Special Appearance-Motion to Dismiss)," listing more specifically "Proceedings, Court's Ruling, Adjournment, and Reporter's Certificate;" a second "volume 2" is entitled "Index of Exhibits," and lists "DX 1" as "Notice of Appearance;" volume 3 is entitled "Hearing in Motions" and specifically lists the following: "Statement by the Court, Statement by Mr. Florance, Statement by the Court, Statement by Mr. Florance, Statement by Mr. Fredericks, Discovery Request Discussed, and Reporter's Certificate;" a second "Volume 3" is entitled "Index of Exhibits" and lists "DX 1-80" described as "Documents attaches to Affidavit," volume 4 is entitled "Motion to Quash" and specifically lists the following: "Statement by the Court, Statement In Mr. Fredericks, Statement by Mr. Florance Court's Ruling-Motion to Amend, Court's Ruling-Motion to Quash, and Reporter's Certificate," volume 5 is entitled "Index of Exhibits" and again specifically lists "DX 1" described as "Notice of Appearance" and "DX 1-80" described as "Documents Attached to Affidavit;" and volume 6 which is entitled "Index of Exhibits" and specifically lists "DX 81" described as "Book entitled 'Money' by James Ewart." An examination of the court

constitutionally protected conduct or speech, it is valid unless it is impermissibly vague in all applications. *State v. Holcombe,* 187 S.W.3d 496, 499 (Tex. Crim. App.) (citing *Village of Hoffman Estates v. Flipside, Hoffman Estates Inc.*, 455 U.S. 489, 495 (1982)), *cert. denied*, 127 S.Ct. 176 (2006).

Analysis

No contrary evidence appears in this record. Appellee did not meet his burden to show the statute was unconstitutional as applied to him. We presume, therefore, the legislature acted in a constitutionally sound fashion in passing the challenged, and presumptively constitutional, statute. The trial judge reversibly erred in presuming otherwise.

We reverse and remand this case for reinstatement of the information on the trial court's docket and for further proceedings consistent with this opinion. [1 7]

Void for Vagueness

The void-for-vagueness doctrine requires that a criminal statute define the offense with sufficient specificity that ordinary people can understand what actions are prohibited and in a manner that does not permit arbitrary and discriminatory enforcement. *Holcombe*, 187 S.W.3d at 499. A statute is not rendered vague merely because the words or terms are not specifically defined. *Ahearn v. State*, 588 S.W.2d 327, 338 (Tex. Crim. App. [Panel Op.] 1979). Words not defined are given their plain meaning, and the statute must be read in context and according to the rules of grammar and ordinary usage. *State v.*

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reporter's record reveals no evidentiary hearing was held.

Sandoval, 842 S.W.2d 782, 787 (Tex. App.—Corpus Christi 1992, pet. ref'd) (citing TEX. GOV'T CODE ANN. § 311.011 (Vernon 1988)). Words defined in dictionaries and with meanings so well known as to be understood by a person of ordinary intelligence have been field not to be vague and indefinite. *Id.* (citing *Floyd v. State*, 575 S.W.2d 21, 23 (Tex. Crim. App. 1978)).

Analysis

Under section 32.49, the prohibited conduct is the owning, holding, or being a beneficiary of a fraudulent lien or claim *and* refusing to execute the release of such lien within twenty-one day's after receiving notice requesting a release of the lien or claim. TEX. PEN. CODE ANN. § 32.49(a). If one engages in the prohibited conduct "with intent to defraud or harm another...," that person commits a class A misdemeanor offense. *Id.* § 32.49(c). Section 51.901(c)(3) of the Texas Government Code, which is referenced in penal code section 32.49, defines "fraudulent." TEX. GOV'T CODE ANN. § 51.901(c)(3).

We examine section 51.901(c) within the context in which it is found. Section 51.901(a) speaks not to the conduct of a person charged under section 32.49, but, rather, to the conduct of those persons named therein: "a clerk of the supreme court, clerk of the court of criminal appeals, [⊥ 8] clerk of a court of appeals, district clerk, county clerk, district and county clerk, or municipal clerk." Section 51.901(a) also imposes on those named individuals a reasonable good faith belief a document or instrument is fraudulent. Sub-section (a) then imposes a duty on the clerk to provide certain written notice to certain people. Section 51.901(b)

imposes a duty on the clerk to provide such notice within a certain prescribed period of time.

Section 51.901(c), referenced in penal code section 32.49. is the sub-section challenged here. More specifically, it is the presumption in that section that appellee challenges. Sub-section (c) creates a permissive presumption that a document or instrument is fraudulent if the document or instrument is one meeting certain criteria. The purpose of this permissive presumption is to enable the clerk to fulfil [sic] his or her duty imposed under sub-sections (a) and (b) of section 51.901.

Section 51.901(d) then provides if the clerk, in reasonable good faith, believes a lien-creating document filed with his or her office is fraudulent, the clerk shall perform the acts described in (d)(1), (2) and (3).

We conclude section 51.901 is not void for vagueness. It is specific in its terms. It does not substantially implicate constitutionally protected conduct or speech. The words used in the statute are words defined in dictionaries and have well-known meanings to persons of ordinary intelligence. When the words used in section 51.901 are given their ordinary meaning, the statute gives sufficiently definite notice to a clerk to enable him or her to perform the required clerical duties.

Moreover, section 51.901 imposes no duty upon, nor does it prohibit any conduct of, a defendant charged under 32.49 for *refusing to release a lien*, which, in a clerk's reasonable good faith, is presumptively fraudulent under section 51.901 of the Texas Government Code. And, it would seem to go

without saying, that section 51.901 of the government code in no way shifts the State's burden of proof under section 32.49 of the penal code to prove beyond a reasonable doubt that a [⊥ 9] defendant committed a criminal offense under that section by refusing to release such a lien.

Although section 51.901 appears to be the main focus of both appellee's and the trial court's attention, the trial judge's written order appears to conclude that both section 32.49 of the penal code and section 51.901 of the government code are unconstitutional as applied to appellee. The court's order states, in relevant part, "The court concludes that Section 32.49 of the Penal Code as it applied to this case, coupled with its reference and tying to Section 51.901(c) of the Government Code *is* and *are* void for vagueness." (emphasis supplied). Whether intentional or not, it is clear the trial court declared section 32.49 of the Texas Penal Code unconstitutional as applied to appellee. Thus, we turn now to address the constitutionality of that section under which appellee was charged.

To the extent appellee complains about section 32.49's reference to section 51.901, we will not repeat our analysis of section 51.901 here, except to note that citation to another statute's definition of a particular term is not in itself unconstitutionally vague. *State v. Ford*, 179 S.W.3d 117, 123 (Tex. App.—San Antonio 2005. no pet.).

Instead, we focus on the presumption contained within section 32.49(b) about which appellee briefly complains in his brief. That section provides: "A person who fails to execute a release of the purported

lien or claim within the period prescribed by Subsection (a)(2) is *presumed to have had the intent to harm or defraud another.*" (Emphasis supplied). That presumption must be read in conjunction with section 2.05 of the penal code. *See* TEX. PEN. CODE ANN. § 2.05 (Vernon Supp. 2006).

A presumption is an evidentiary device and, in criminal law parlance, is said to be either mandatory or permissive. *Sandoval*, 842 S.W.2d at 788 (citing *Willis v. State*, 790 S.W.2d 307, 309 (Tex. Crim. App. 1990)). The distinction between a mandatory presumption and a permissive presumption is determined by the effect that each has upon the evidence. *Willis*, 790 S.W.2d at 309. [⊥ 10] Mandatory presumptions are unconstitutional because they eliminate the State's burden of proving guilt beyond a reasonable doubt. *Id.* A permissive presumption allows, but does not require, the trier of fact to infer the elemental fact or ultimate fact from the predicate evidentiary fact or facts. *Id.* at 310. Because it does not relieve the State's burden of proving guilt beyond a reasonable doubt, a permissive presumption is generally deemed constitutional if the reviewing court determines that a rational trier of fact could make the connection permitted by the presumption. *Id.*

The Texas Penal Code provides that presumptions in Texas are permissive. *Id.* Section 2.05 provides the consequences of a presumption created by the penal code. *See* TEX. PEN. CODE ANN. § 2.05. It also sets out specific jury instructions to be given if the issue is presented to a jury. *Id.* One of those jury instructions is "that the facts giving rise to the presumption must he proven beyond a

reasonable doubt." *Id.* Another instruction is, "that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find." *Id.* And, finally, it provides the State still "must prove beyond a reasonable doubt each of the other elements of the offense charged;" and "if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose." *Id.*

As long as section 2.05 is adequately incorporated into the court's charge, a presumption will be construed as permissive. *Sandoval*, 842 S.W.2d at 788 (citing *Willis*, 790 S.W.2d at 310). Thus, we conclude the presumption in section 32.49(b), in conjunction with a correct jury charge, is permissive—just as the *Sandoval* court did with respect to section 38.12(b). *See Sandoval*, 842 S.W.2d at 788.

Reading section 32.49 in conjunction with section 2.05, as we must, we conclude the statute is neither void for vagueness nor does it shift the State's burden of proving appellee's guilt of the [⊥ 11] charged offense beyond a reasonable doubt. And because we conclude a rational trier of fact could make the connection permitted by the presumptions in sections 32.49(b) and 51.901(c), respectively, we conclude that both section 32.49 of the Texas Penal Code and section 51.901(c) of the Texas Government Code are constitutional as applied to appellee.

Accordingly, we reverse the trial court's order to the contrary and remand this case to the trial court for reinstatement of this cause on its docket and

further proceedings consistent with this opinion.

/s/ Sue Lagarde
SUE LAGARDE
JUSTICE, ASSIGNED

Do Not Publish
TEX. R. APP. P. 47
070088F.U05

2007 Aug 31—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

No. 05-07-00088-CR

STATE OF TEXAS, Appellant V. RICHARD FLORANCE, Appellee	Appeal from the County Court at Law No. 2 of Collin County, Texas. (Tr.Ct.No. 002-81238-06). Opinion delivered by Justice Lagarde. Chief Justice Thomas and Justice Richter also participating.

JUDGMENT

Based on the Court's opinion of this date, the judgment of the trial court is **REVERSED** and the cause **REMANDED** to the trial court for further proceedings consistent with this opinion.

Judgment entered August 31, 2007.

/s/ Sue Lagarde
SUE LAGARDE
JUSTICE, ASSIGNED

Trial Court

2007 Jan 3—Transferor Court's Order of Dismissal

2-81238-06
Cause No.

THE STATE OF TEXAS	IN THE COUNTY COURT
(Seal of)	AT LAW NO. 2 OF
vs.	COLLIN COUNTY,
(COLLIN COUNTY)	TEXAS
RICHARD FLORANCE	HON. JERRY LEWIS, PRESIDING

ORDER DISMISSING CASE

On the date signed below the court ruled on the defendant's motion to dismiss this criminal cause of action. The motion had been previously urged and argument was presented on September 15, 2006, and more specifically on November 16, 2006. The court took the matter under advisement. This date in response to the defendant's argument and the courts' questions in November, the state urged a motion to amend the information. That motion was granted. It is the Amended Information that is this date dismissed.

The court finds the language used by the legislature to create a criminal offense fails to meet the standards for prosecuting people in this state. Specifically, the applicable statute attempts to allow a defendant to be prosecuted for committing fraud, but does not adequately define what "fraud" means. The court finds the manners and means set forth in

the statute are vague, impossible of proof in a criminal context, and provide insufficient notice to any defendant regarding how they can defend themselves.

The court finds the statute results in a denial of due process in that it shifts the burden of proof to the defendant to prove there was either some law in Texas or the United States of America under which he is authorized to file the questioned lien or some facts showing the respondent under the lien expressly or impliedly consented to such lien. The court finds the presumption of fraud language creates a trial, if allowed to go forward, in which the defendant would be required to prove himself innocent.

The court concludes that Section 32.49 of the Penal Code as it applied to this case, coupled with its reference and tying to Section 51.901(c) of the Government Code is and are void for vagueness. The court further concludes this defendant in this case is being denied due process by the statute's shifting the burden of proof in a criminal case.

These problems are inherent in the penal statutes and cannot be cured by the prosecuting attorney at the county level. The defendant's motion to dismiss is

granted and the case is ordered dismissed.

A copy of this order shall be mailed to the state and to the defendant who represents himself.

Date signed: January 3, 2007

/s/ Jerry Lewis X
JERRY LEWIS

MAILED:

January 3, 2007 Lisa Podd
date *Court Coordinator*

Appendix C—The Related, Civil, Star Chamber case (Double Jeopardy?)

Appellate Court

2007 Apr 10—Opinion

AFFIRM; Opinion filed April 10, 2007

(Seal of THE STATE OF TEXAS)

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-06-00992-CV

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR

On Appeal from the 401st Judicial District Court Collin County, Texas
Trial Court Cause No. 401-2217-06

OPINION

Before Justices FitzGerald, Richter, Francis
Opinion By Justice FitzGerald

The trial court found Richard John Florance, Jr.'s "Florance's First Notice of Lien" fraudulent, as defined by section 51.901(c) of the government code, in its "Judicial Findings of Fact and Conclusions of

Law Regarding a Document Purporting to Create a Lien." Representing himself, Florance appeals that decision. We affirm the trial court's findings of fact and conclusions of law.

Brenda Taylor is the Collin County Clerk. On December 15, 2005, Florance filed "Florance's First Notice of Lien" in the Collin County records. It referred to cause number 001-1412-05 in County Court at Law No. 1, styled *Amanda Florance, a minor, and Richard John Florance. Jr., next friend v. State of Texas, a federal corporation.* In that case, Florance sought mandamus relief and a declaratory judgment challenging the Plano Municipal Court's jurisdiction [⊥ 2] over his daughter's class C misdemeanor citation for being a minor in possession of alcohol. *See In re A.F.*, a minor, No. 05-05-01435-CV, 2006 WL 1728035 (Tex. App.-Dallas June 13, 2006, orig. proceeding [mand. denied]), *cert. denied*, 127 S. Ct. 1 326 (2007). Florance sought to appeal the county court's decision in that case.

Florance states in his brief that he requested the Collin County Clerk to prepare the clerk's record. Florance initially refused to pay the $129 fee; however, he paid the fee on December 15, 2005, when faced with dismissal of his appeal for want of prosecution. [1] On December 15, 2005, as noted above, Florance filed "Florance's First Notice of Lien," purporting to create a lien for $129 against Taylor on "all property and property interests

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[1] *See* TEX. R. APP. P. 38.1(f) ("In a civil case, the court will accept as true the facts stated unless another party contradicts them.")

[N.B. Apparently, the court's own Record doesn't suffice as adequate basis for contradiction. *RJF*]

whether found in or beyond this state, whether real, personal or intangible, in which you have any right, title or interest, as security for payment of this claim."

On December 22, 2005, Taylor's counsel sent Florance a certified letter, return receipt requested, putting Florance "on notice" that the filing of "Florance's First Notice of Lien" was "illegal" and referring to sections 51.901(c), 51.902, and 51.903 of the government code. In addition, counsel advised Florance that "it may also be a criminal offense to file a fraudulent Lien or Claim," referring to section 32.49 of the penal code. Counsel requested Florance to withdraw "Florance's First Notice of Lien" or, as provided by section 32.49, within twenty-one days of the receipt of the letter, execute a release of "Florance's First Notice of Lien." *See* TEX. PEN. CODE ANN. § 32.49(a)(2) (Vernon 2003). Counsel also stated that, absent the withdrawal or release, he would "seek all legal recourses available to the County Clerk . . .." The return receipt shows the December 22 letter was delivered on December 23, 2005, and that Amanda Florance signed for it. [⊥ 3]

On April 6, 2006, Florance filed "Florance's Withdrawal of Notice of Lien." Subsequently, pursuant to section 51.903, Taylor filed her "Motion for Judicial Review of Documentation or Instrument Purporting to Create a Lien or Claim" in the 401st Judicial District Court. After hearing the motion, the trial court signed its findings of fact and conclusions of law.

Six days after the hearing, Florance filed with the district clerk "Florance's Verified Bill of Exceptions

and Notice of Appeal." In this document, Florance states, "The First Notice that I received that this matter even existed is the 'final order.' I specifically assert my right to commercial Due Process."

Section 51.901 provides a procedure to determine whether a lien is fraudulent. Specifically, a document or instrument purporting to create a lien or assert a claim on real or personal property or an interest in real or personal property is presumed fraudulent if it:

> (A) is not a document or instrument provided for by the constitution or laws of this state or of the United States;
>
> (B) is not created by implied or express consent or agreement of the obligor, debtor, or the owner of the real or personal property or an interest in the real or personal property, if required under the laws of this state, or by implied or express consent or agreement of an agent, fiduciary, or other representative of that person; or
>
> (C) is not an equitable, constructive, or other lien imposed by a court with jurisdiction created or established under the constitution of laws of this state or of the United States.

TEX. GOV'T CODE ANN. § 51.901(c)(2)(A)-(C) (Vernon Supp. 2006). If a county clerk believes in good faith that a document filed with the county clerk to create a lien is fraudulent, the clerk shall:

> (1) request the assistance of the county or district attorney to determine whether the document is fraudulent before filing or recording

the document;

(2) request that the prospective filer provide to the county clerk additional documentation supporting the existence of the lien, . . .; and

(3) forward any additional documentation received to the county or district [⊥ 4] attorney.

Id. § 51.901 (d).

Section 51.903 is titled "Action on Fraudulent Lien on Property." Section 51.903(a) provides a "suggested form" for a motion, verified by affidavit, that a person who believes that a purported lien is fraudulent may file with the district clerk. *Id.* § 51.903(a) (Vernon 2005). Section 51.903(c) provides that a motion under section 51.903 may be ruled on by a district judge having jurisdiction over real property matters in the county where the subject document was filed. *Id*, § 51.903(c). It also provides that "[t]he court's finding may be made solely on a review of the documentation or instrument attached to the motion and without hearing any testimonial evidence." *Id.* "The court's review may be made ex parte without delay or notice of any kind." *Id.* Section 51.903(e) provides that "the district judge shall enter an appropriate finding of fact and conclusion of law . . ." *Id.* § 51.903(e). Section 51.903(g) provides a suggested form order appropriate to comply with this section. *Id.* § 51.903(g). Here, the district Judge's findings of fact and conclusions of law track the statutory language, stating that the judge found that "Florance's First Notice of Lien" is fraudulent as defined by section 51.901(c); that it meets the requirements of section 51.901(c)(2)(A) through (C); and that "[t]here is no

valid lien or claim created by 'Florance's First Notice of Lien."

In his sixth and eighth points, Florance argues that sections 51.901 and 51.903 violate due process because the presumption of fraud is "irrebuttable via no Notice or opportunity to be heard." Although not argued as a specific point, Florance states, "The first Florance knew of the matter was the receipt in the email [2] of the *ex.parte* judgment declaring something 'fraudulent.'" However, there is nothing in the record to show that Florance brought this complaint to the attention of the trial court. *See* TEX. R. APP. P. 33.1(a) (preservation of complaint requires making it to trial court by [⊥ 5] timely request, objection, or motion, and either ruling or refusal to rule by trial court). Florance filed his "Florance's Verified Bill of Exceptions and Notice of Appeal" with the district clerk. There is nothing in the record to show he brought it to the district judge's attention, thereby making the judge aware of his issue of notice under this chapter and giving the judge the opportunity to rule on it. *See In re Davidson*, 153 S.W.3d 490, 491 (Tex. App.—Amarillo 2004, orig. proceeding) ("Showing that a motion was filed with the court clerk does not constitute proof that the motion was brought to the trial court's attention or presented to the trial court with a request for a ruling."); *Metzger v. Sebek*, 892 S.W.2d 20, 49 (Tex. App.—Houston [1st Dist.] 1994, writ denied) (court not required to consider motion not called to its attention). Accordingly, Florance failed to preserve this argument for review.

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[2] [N.B. "Mail", not "email". *RJF*]

We need not address Florance's first through fifth points, which offer irrelevant discussion regarding "maritime liens," "*in rem* matters," and the perfection of liens, without attacking the trial court's findings of fact and conclusions of law. *See Employers Cas. Co. v. Henager*, 852 S.W.2d 655, 658 (Tex. App.—Dallas 1993, writ denied) (unchallenged findings of fact are binding on parties and appellate court). [3] Florance's seventh point discusses section 51.902, which relates to a fraudulent judgment lien and is irrelevant to this case.

We affirm the trial court's "Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien."

/s/ Kerry P. Fitzgerald
KERRY P. FITZGERALD
JUSTICE

060992F.P05

[3] [N.B. It's good law. Applying it, item (1) is an issue of law, thus self-preserving, *see also* Points 1-5, and item (4) is not only proposed by TAYLOR but also "not objected to" by her. *RJF*]

2007 Apr 10—Judgment

(Seal of THE STATE OF TEXAS)

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN RE A PURPORTED LIEN OR CLAIM AGAINST COLLIN COUNTY CLERK BRENDA TAYLOR	Appeal from the 401st Judicial District Court of Collin County, Texas. (Tr.Ct.No. 401-2217-06). Opinion delivered by Justice FitzGerald, Justices Richter and Francis participating.
No. 05-06-00992-CV	

In accordance with this Court's opinion of this date, the trial court's July 13, 2006 Judicial Findings of Fact and Conclusions of Law Regarding a Document Purporting to Create a Lien is **AFFIRMED**.

It is **ORDERED** that Collin County Clerk Brenda Taylor recover her costs of this appeal from Richard John Florance, Jr.

Judgment entered April 10, 2007.

/s/ Kerry P. Fitzgerald
KERRY P. FITZGERALD
JUSTICE